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NOTES  
ON  
THE LAW OF  
Master and Servant,  
*WITH ALL THE AUTHORITIES.*

BY  
JAMES PATERSON, M.A., BARRISTER-AT-LAW,  
EDITOR OF "THE LICENSING ACTS," ETC., ETC.



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## P R E F A C E.

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THIS Work is designed for the use of those who are actively engaged in the Practice of the Law, and who, while dispensing with comments and expositions of principles, desire to have ready access to the authorities usually referred to in the discussion and consideration of the subjects.

The following improvements in abbreviating the references have been adopted, as there can now be no risk of confusion thereby caused—

1 Ch.	for	L. R.	1 Ch. Ap.
1 Eq.	„	L. R.	1 Eq. Cas.
1 C. C. R.	„	L. R.	1 C. C. R.
1 Adm.	„	L. R.	1 Ad. & E.
1 Prob.	„	L. R.	1 Prob. & Div.
1 Pr. C.	„	L. R.	1 Priv. C.
L. T.	„	L. T.	(N.S.)

As the leading railway companies are parties in so many modern cases, the following initials are used :—

G. N. R.; G. W. R.; L. N. W.; L. S. W.; L. S. E.;  
G. E. R.; N. E. R.; Midl. R.; Metrop. R.; L. C. D.;  
L. B. S. C.

J. P.

GOLDSMITH BUILDING, TEMPLE.  
*October, 1885.*



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# THE LAW OF MASTER AND SERVANT.

## CHAPTER I.

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**Freedom of Contract.**—Whether an express contract by deed to serve another for life is valid (*Wallis v. Day*, 2 M. & W. 273; 1 Jur. 73); engagement for life not to carry on particular business in particular place not void (*Hitchcock v. Coker*, 6 A. & E. 438; 1 N. & P. 796); if unlimited engagement for life can have a reasonable consideration (*Archer v. Marsh*, 6 A. & E. 959; 2 N. & P. 562); freedom of contract, agreement between masters not to employ workmen, except on certain terms, to be settled by a majority of masters, held not binding (*Hilton v. Eckersley*, 6 E. & B. 47; 25 L. J. Q. B. 199; 2 Jur. (n.s.) 587).

**Test as to whose Orders are obeyed.**—Test of being servant is being bound to obey orders of a master as to the

doing of his work (*R. v. Negus*, 2 C. C. R. 37; 42 L. J. M. C. 62; 28 L. T. 646; 21 W. R. 687); casual employment for time being, viz., to sell a cow, treated as servant in regard to embezzlement of price (*R. v. Hughes*, 1 Mood. 370); contractor's workmen not servants of the principal who employs contractor (*Reedie v. L. N. W.*, 4 Ex. 244); same as to seamen, held not servants of owner, but of charterer (*Fenton v. Dublin*, 8 A. & E. 835).

**Test as to Mode of Paying a Servant.**—Mode of paying servant not essential to relation of servant; payment of servant may be by commission on work done (*R. v. Macdonald*, L. & C. 85; 9 Cox 10; 31 L. J. M. C. 67; 5 L. T. 330; 10 W. R. 21); payment may be by gratuities from customers, as driver of a coach (*R. v. White*, 8 C. & P. 742).

**Test as to who has the Discharging of Servant.**—Power to discharge servant not conclusive as to who is the master (*Reedie v. L. N. W.*, 4 Ex. 244); one servant paying another's wages, yet both held servants of same master (*Willett v. Boote*, 6 H. & N. 26; 30 L. J. M. C. 6; 3 L. T. 276); vestrymen appointing clerk, but a committee of management being the masters (*R. v. Callaghan*, 8 C. & P. 154); savings bank managers appointing clerks, but trustees the masters (*R. v. Jenson*, 1 Mood. 434); manager of works employing servants, the employer only liable (*Stone v. Cartwright*, 6 T. R. 411); public commissioners with power to appoint officers, how far the officers were servants (*Bogg v. Pearse*, 10 C. B. 534; 20 L. J. C. P. 99; 2 L. M. P. 21).

**Servant distinguished from Contractor.**—Test is whether the employer is to decide the mode or details of doing the work, or the other is to use independent judgment; contractor of club-house employing sub-contractor not liable for sub-contractor's servant (*Rapson v. Cubitt*, 9 M. & W. 710); employer not liable for contractor's men making a bridge and negligent (*Reedie v. L. N. W.*, 4 Ex. 244); sub-contractor to pave street leaving stones, the employer held not liable (*Overton v. Freeman*, 11 C. B. 867; 21 L. J. C. P. 52; 16 Jur. 65); contractor to make a drain across highway, the employer not liable (*Peachey v. Rowland*, 13 C. B. 182; 22 L. J. C. P. 81; 17 Jur. 764); employing workman to clean out drain on highway, held liable for his negligence (*Sadler v. Henlock*, 4 E. & B. 570; 24 L. J.



Q. B. 138; 1 Jur. (N.S.) 677); for some purposes a servant, for others a contractor; a *prima donna* when engaged to sing, subject to directions, treated as servant (*Lumley v. Gye*, 2 E. & B. 216; 22 L. J. Q. B. 463; 17 Jur. 827); cabman hiring cab and horse for day, paying a fixed sum, is not a servant at common law, but may be made so by statute for some purposes (*Powles v. Hider*, 6 E. & B. 207; 25 L. J. Q. B. 331; 2 Jur. (N.S.) 472; *Venables v. Smith*, 2 Q. B. D. 279; 46 L. J. Q. B. 470; 36 L. T. 509; 25 W. R. 584; *King v. Spurr*, 8 Q. B. D. 104; 51 L. J. Q. B. 105; 45 L. T. 709; 30 W. R. 152; 46 J. P. 198); one partner agreeing to engage and pay seamen, the other is also liable for seamen's acts (*Steel v. Lester*, 3 C. P. D. 121; 47 L. J. C. P. 43; 37 L. T. 642; 26 W. R. 212); railway company employing Chaplin & Horne as carriers to deliver goods to station, held that a servant of C. & H. was company's servant for most purposes (*Machu v. L. S. W.*, 2 Ex. 415; 17 L. J. Ex. 271; 12 Jur. 501); crew of steamers employed by railway company held company's servants (*Doolan v. Midl. R.*, 2 App. C. 1810; 37 L. T. 317; 25 W. R. 882); person *de facto* acting as servant treated as servant (*R. v. Wellings*, 1 C. & P. 457); persons affecting to carry on life assurance business for company treated as binding company (*Re County*, 5 Ch. 288; 39 L. J. Ch. 471; 22 L. T. 537; 18 W. R. 390); chairman of public meeting not in the relation of master or employer towards the stewards or managers assisting (*Lucas v. Mason*, L. R. 10 Ex. 251; 44 L. J. Ex. 145; 33 L. T. 135; 23 W. R. 924); contractor's servants, when making employer liable (*Allen v. Hayward*, 7 Q. B. 960; 15 L. J. Q. B. 99; 10 Jur. 92); B. hiring for six weeks and then sub-letting out a thatcher usually in A.'s employment, B. is master, and is liable (*Holmes v. Onion*, 2 C. B. (N.S.) 790; 26 L. J. C. P. 261); A. hiring for a day from livery stables his horses and driver for A.'s own carriage, the stabler remains the master of driver, and is liable for negligence (*Quarman v. Burnett*, 6 M. & W. 499; 4 Jur. 969; *Laugher v. Pointer*, 5 B. & C. 545; *Dalzell v. Tyrer*, E. B. E. 899; 28 L. J. Q. B. 52; 5 Jur. (N.S.) 335); same as to corporation hiring dust contractor's carts and servants (*Jones v. Liverpool*, 14 Q. B. D. 890); owner of coach driving hired horses, liability (*Maclaughlin v. Pryor*, 4 M. & Gr. 48; 4 Sc. N. R. 655; Car. & M. 354); contractor using owner's servant as his own stevedore (*Murray*

v. *Currie*, L. R. 6 C. P. 24; 40 L. J. C. P. 26; 23 L. T. 557; 19 W. R. 104); inevitable necessity acting on servant, dog barking and frightening horses, master not liable (*Holmes v. Mather*, L. R. 10 Ex. 261; 44 L. J. Ex. 176; 32 L. T. 361; 23 W. R. 864); test as to who has control of the work (*Blake v. Thirst*, 2 H. & C. 20; 32 L. J. Ex. 189; 8 L. T. 251; 11 W. R. 1034); if contractor's servants can be treated as servants of contractor's employer, while contracting to work mine engine (*Rourke v. White Moss*, 2 C. P. D. 205; 46 L. J. C. P. 283; 36 L. T. 49; 25 W. R. 263); porter of railway, over which are running powers, binds the other company (*Self v. L. B. S. C.*, 42 L. T. 173; 44 J. P. 344); common railway station, the porter who causes damage binds his own employers (*Tebbutt v. Bristol*, L. R. 6 Q. B. 73; 40 L. J. Q. B. 78; 23 L. T. 772; 19 W. R. 383); gas lamp overhanging highway falling on passenger, being badly repaired, owner of lamp liable (*Tarry v. Ashton*, 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. 97; 24 W. R. 581).

**As to Servants having no Workman's Lien.**—A workman, not being servant, has special lien against the employer in respect of article made or improved, as grinding wheat (*Chase v. Westmore*, 5 M. & S. 180); so a trainer has on the horse (*Jacobs v. Latour*, 5 Bing. 130; 2 M. & P. 201); owner of a stallion or mare that has been covered, whether contract is express or not (*Scarfe v. Morgan*, 4 M. & W. 270; 2 Jur. 569); lien is not a transferable right (*Daubigny v. Duval*, 5 T. R. 604); lien, except in special cases, does not authorize a sale, though expense caused by keeping (*Thames v. Derrick*, 1 J. & H. 93; 29 L. J. Ch. 714; 6 Jur. (N.S.) 1013; 8 W. R. 408); lien not acquired by wrongfully claiming (*Lempriere v. Pasley*, 2 T. R. 485); expense of keeping chattel not covered by lien (*Somes v. British*, 8 H. L. C. 338; 30 L. J. Q. B. 229; 8 W. R. 707; 6 Jur. (N.S.) 761); lien of shipwright lost by waiver, as by agreeing to give credit (*Raitt v. Mitchell*, 4 Camp. 146); lien lost by setting up ground other than lien (*Boardman v. Sill*, 1 Camp. 410 n); if workman is a servant, he has no lien against his employer (*R. v. Sankey*, 5 A. & E. 423; 6 N. & M. 839); clerk to local board has no lien against his corporation (*Newington v. Eldridge*, 12 Ch. D. 349); workman has no lien on materials used in master's premises (*Franklin v. Hosier*, 4 B. & Ald. 341); seaman, though a



servant, has a lien on ship for wages, and it is a maritime lien and paramount (*Neptune*, 1 Hagg. 238; *The Margaret*, 3 Hagg. 238); agreement by seaman to waive lien is void (17 & 18 Vict. c. 104, s. 182); lien not extended beyond the labour expended by himself (*Turner v. Letts*, 20 Beav. 185; 24 L. J. Ch. 638; 1 Jur. (N.S.) 1057); test of extent of lien is the intention of parties implied from the circumstances (*Scarfe v. Morgan*, 4 M. & W. 270).

**Servant of Two Masters.**—How far servant may be servant of several masters at same time; a clerk who sells goods for several may be treated as servant of each severally (*R. v. Batty*, 2 Mood. 257); traveller for several houses treated as servant of each (*Tite's Case*, L. & C. 29; 30 L. J. M. C. 142; 8 Cox, 458; 4 L. T. 259; 9 W. R. 554; 7 Jur. (N.S.) 556; *R. v. Carr*, R. & Ry. 198; *R. v. Turner*, 11 Cox, 551; 22 L. T. 278).

**Servant distinguished from Agent.**—An agent is usually allowed to do a thing in his own way, but a servant is liable to be directed as to details (*R. v. Walker*, D. & B. 600; 27 L. J. M. C. 207; 8 Cox, 1); collector or agent to get orders and receive money at his own home not a servant (*R. v. Bowers*, 1 C. C. R. 41; 35 L. J. M. C. 206; 14 L. T. 671; 14 W. R. 803; 12 Jur. (N.S.) 550; *R. v. Negus*, 2 C. C. R. 34; 42 L. J. M. C. 62; 28 L. T. 646; 21 W. R. 687); clerk allowed to receive dock warrants in own name held not a factor, but a servant (*Lamb v. Attenborough*, 1 B. & S. 831; 31 L. J. Q. B. 41; 10 W. R. 211; 8 Jur. (N.S.) 280).

**Servant distinguished from Bailee.**—Drover employed to sell a pig at market and bring back the price, not a servant, but a bailee (*R. v. Goodbody*, 8 C. & P. 665); paymaster getting from cashier fraudulently more than enough to pay men is servant as to that sum (*R. v. Cooke*, 1 C. C. R. 295; 40 L. J. M. C. 68; 24 L. T. 108; 19 W. R. 389; 12 Cox, 10); cabman hiring cab and horse paying a sum per day, a bailee, not a servant of owner (*Fowler v. Lock*, L. R. 10 C. P. 90; 43 L. J. C. P. 394; 31 L. T. 844; 23 W. R. 415); how far cabman so hired is at common law, as modified by statute, a servant (*Powles v. Hider*, 6 E. & B. 207; 25 L. J. Q. B. 331; *Venables v. Smith*, 2 Q. B. D. 279; 46 L. J. Q. B. 470; 36 L. T. 509; 25 W. R. 584; *King v. Spurr*, 8 Q. B. D. 104; 51 L. J. Q. B. 105; 45 L. T. 709).

**Servant as Tenant.**—Servant occupying held not a tenant, and may be turned out at pleasure (*White v. Bayley*, 10 C. B. (N.S.) 227; 30 L. J. C. P. 253; 7 Jur. (N.S.) 948); the two relations compatible, if occupation of premises necessary for service, then not tenant but servant (*R. v. Spurrell*, L. R. 1 Q. B. 72; 35 L. J. M. C. 74; 13 L. T. 364; 14 W. R. 81; 12 Jur. (N.S.) 208); neither owner nor tenant a lay clerk (*Bridgewater v. Durrant*, 31 L. J. C. P. 36; 11 C. B. (N.S.) 7; 5 L. T. 491; 10 W. R. 171; 38 Jur. (N.S.) 590); master entitled to remove servant's furniture when service ceases, even though service wrongfully determined; Dissenting minister on footing of tenant at will (*Doe v. McKaeg*, 10 B. & C. 721); superintendent of drainage operations a servant (*Lake v. Campbell*, 5 L. T. 582); servant cannot assign his right of possession or dispute title (*Doe v. Birchmore*, 9 A. & E. 662; *Delaney v. Fox*, 2 C. B. (N.S.) 768; 26 L. J. C. P. 248); entering by leave of party in possession gives no adverse title (*Doe v. Baytup*, 3 A. & E. 188); wages less by 5*l.* in respect of free cottage occupied, held a servant and not a tenant (*Bertie v. Beaumont*, 16 East, 33); 2*s.* deducted from wages as labourer for occupying cottage, held servant (*R. v. Cheshunt*, 1 B. & Ald. 473); shepherd to occupy cottage free and 7*s.* per week wages, held servant (*R. v. Bardwell*, 2 B. & C. 161); toll collector to live in toll-house and 1*s.* deducted from wages per week, held servant (*Hunt v. Colson*, 3 M. & Sc. 790); surgeon to hospital occupying rooms in hospital, held servant and not tenant (*Dobson v. Jones*, 5 M. & Gr. 112; 13 L. J. C. P. 126; 8 Sc. N. R. 80); if master has no title to premises, servant has none (*R. v. Lynn*, 8 A. & E. 379; 3 N. & M. 411); to manage beerhouse for A. and live on premises, and to remove from business at a month's notice, held a servant and not a tenant (*Mayhew v. Suttle*, 4 E. & B. 347; 24 L. J. Q. B. 54; 1 Jur. (N.S.) 303); keeper of Guildhall and resident on premises, held not a tenant (*Clark v. Bury*, 1 C. B. (N.S.) 23; 26 L. J. C. P. 12); Wesleyan minister living in house of trustees, held servant and not tenant (*R. v. Tiverton*, 30 L. J. M. C. 79); librarian and storekeeper living in premises, with commissions, and allowed to carry on business for himself, held not tenant (*White v. Bayley*, 10 C. B. (N.S.) 227; 30 L. J. C. P. 253; 7 Jur. (N.S.) 948); militia sergeant occupying house assigned to him and held free, held not a tenant (*Fox v. Dalby*, L. R. 10 C. P. 285; 44 L. J. C. P. 42; 31 L. T. 478; 23 W. R. 244); if occupation not connected with service, as

collier living in house of employer rent free, held a tenant (*Smith v. Seghill*, L. R. 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T. 859; 23 W. R. 745); residence of governor inside or outside the gaol is test of his being tenant (*Gambier v. Lydford*, 3 E. & B. 346; 23 L. J. M. C. 69; 18 Jur. 352); canon of cathedral occupying house without interference of chapter, held a tenant (*Ford v. Harington*, L. R. 5 C. P. 282; 39 L. J. C. P. 107; 21 L. T. 609; 18 W. R. 289).

**Servants distinguished from Partners.**—Payment of servant by share of profits does not make him partner in trade (28 & 29 Vict. c. 86, s. 2); servant may be paid by commission on work done as traveller for a manufacturer (*R. v. Negus*, 2 C. C. R. 34; 42 L. J. M. C. 62; 28 L. T. 616; 21 W. R. 687; *R. v. Tite*, L. & C. 29; 30 L. J. M. C. 142; 14 L. T. 259; 9 W. R. 554; *R. v. Turner*, 11 Cox, 551; 22 L. T. 278); manager paid by 40 per cent. on profits, held a servant (*Stocker v. Brockelbank*, 3 Mac. & G. 250; 20 L. J. Ch. 401; 15 Jur. 591); manager of works to be paid by share of profits, how profits to be calculated (*Rish-ton v. Grissell*, 5 Eq. 326; *Re British*, 25 L. T. 653); to manage mill for five years and not engage in other trade, and to be paid share of profits, held partners (*Greenham v. Gray*, 4 Ir. C. L. R. 501); tailor's traveller at a commission on profits, held not partners (*Andrews v. Pugh*, 24 L. J. Ch. 58); partners as to third person in tallyshop (*Pott v. Eyton*, 3 C. B. 32; 15 L. J. C. P. 257); joint owners of racehorse, held not partners (*French v. Styring*, 2 C. B. (n.s.) 362; 26 L. J. C. P. 181; 3 Jur. (n.s.) 670); collector at fixed salary and per centage on profits, held a servant (*R. v. Macdonald*, L. & C. 85; 31 L. J. M. C. 67; 5 L. T. 330; 10 W. R. 21; 7 Jur. (n.s.) 1127); engaged to carry on underwriting business at a salary and one-fifth of profits, held a servant (*Ross v. Parkyns*, 20 Eq. 331; 44 L. J. Ch. 610; 30 L. T. 331; 24 W. R. 5); government contractor agreed to employ H. during the contract at a salary, held H. was servant and not partner (*Harrington v. Churchyard*, 29 L. J. Ch. 521; 6 Jur. (n.s.) 576; 8 W. R. 302); W. engaged to manage glebe at salary and one-third of profits, held a servant, not a partner (*R. v. Wortley*, 2 Den. C. 333; 21 L. J. M. C. 44; 15 Jur. 1137); captain of steamer at sum per month and commission on proceeds, held each month recoverable separately (*Taylor v. Laird*, 1 H. & N. 266; 25 L. J. Ex. 329).

**Infants as Servants and Apprentices** (see also *post*, Employers and Workmen Act).—Contract of service not within Infants Contract Act (37 & 38 Vict. c. 62); infant's contract to serve, held binding because *prima facie* to his benefit (*Wood v. Fenwick*, 10 M. & W. 195); infant's contract to serve binding, unless shown to be to his prejudice (*R. v. Wigston*, 3 B. & C. 484; 5 D. & R. 339); boy going on approval, jury to say when contract commenced (*Earratt v. Burghart*, 3 C. & P. 381); boy on trial, jury to say if contract rescinded, and what compensation the boy entitled to on dismissal (*Phillips v. Jones*, 1 A. & E. 333); no deed signed, master could not sue father for board (*Harrison v. James*, 7 H. & N. 804; 31 L. J. Ex. 248); jury to say whether father agreed to pay for board or to pay only at end of a term (*Attwaters v. Courtney*, Car. & M. 51); contract beyond a year to be in writing (Statute Frauds, sect. 4; 54 Geo. 3, c. 96); apprentice treated as servant under statutes as to servants, quoad the particular business learnt (*R. v. Mellish*, R. & Ry. 80); no technical words required to make apprentice, such as the use of word "apprentice" or "teach" (*R. v. Wishford*, 5 N. & M. 540; *R. v. Rainham*, 1 East, 531); teaching is essential term of contract (*R. v. Knutsford*, 1 B. & Ad. 726); nature of the relation results from view of the whole contract, as shoemaker teaching a boy for four years, held an apprenticeship (*R. v. Kings Lynn*, 6 B. & C. 97); if teaching and learning business is not made paramount, then *prima facie* only a servant (*R. v. Crediton*, 2 B. & Ad. 493); verbal agreement to teach framework-knitting for six years, held apprentice (*R. v. Mountsorrel*, 2 M. & S. 459); verbal agreement to teach carpenter business is apprenticeship (*R. v. Ightman*, 4 A. & E. 936; 6 N. & M. 320); infant's contract to serve shipbuilder for five years, proviso to terminate if works ceased from accident, held not invalid (*Leslie v. Fitzpatrick*, 3 Q. B. D. 229; 47 L. J. M. C. 22; 37 L. T. 461); if infant's contract of service allow a penalty or forfeiture to be incurred by infant, held void (*Fisher v. Mowbray*, 8 East, 330; *Baylis v. Dineley*, 3 M. & S. 477); mere penalties not necessarily prejudicial to infant (*Wood v. Fenwick*, 10 M. & W. 195); master reserving power to dismiss at will, held prejudicial and void (*R. v. Lord*, 12 Q. B. 757; 17 L. J. M. C. 181; 12 Jur. 1001); proviso to stop wages if a turn-out occur, held deed void (*Meakin v. Morris*, 12 Q. B. D. 352; 53 L. J. M. C. 72; 32 W. R. 661; 48 J. P. 344); apprentice enlisting then returning, master

not bound to receive back (*Hughes v. Humphreys*, 6 B. & C. 680; 9 D. & R. 715); apprentice or servant enlisting as militiaman how far rescinding of contract (38 & 39 Vict. c. 69, s. 78); enlisting in army of an apprentice no ground for proceeding in court (44 & 45 Vict. c. 58, s. 144); apprenticeship deed may be disaffirmed by infant at majority (*Ex parte Davis*, 5 T. R. 715); disaffirmance to be in reasonable time (*Wray v. West*, 15 L. T. 180); though remedy given by Employer and Workmen Act, 1875, disaffirmance not excluded (*Moore v. Smith*, 39 J. P. 772); infant repudiating a contract to become shareholder (*Newry Co. v. Coombe*, 3 Ex. 565; 18 L. J. Ex. 325); never ratifying contract to take shares (*N. W. R. v. McMichael*, 5 Ex. 114; 20 L. J. Ex. 97; 15 Jur. 132); contract as to shares to be disaffirmed in reasonable time (*Dublin v. Wicklow*, 8 Ex. 181; 22 L. J. Ex. 94); education of children between thirteen and fourteen since 41 Vict. c. 16, as restricting employment (*Saunders v. Crauford*, 9 Q. B. D. 613; 51 L. J. Q. B. 460; 46 L. T. 420; 46 J. P. 344; *Winyard v. Toogood*, 10 Q. B. D. 218; 52 L. J. M. C. 25; 48 L. T. 289; 31 W. R. 271; 47 J. P. 325).

**Married Women as Servants** (see also *post*, Employers and Workmen Act).—Wife held not competent to bind herself as servant under statute 30 & 31 Vict. c. 141 (*Tomkinson v. West*, 32 L. T. 462; *Hodgkinson v. Green*, 39 J. P. 600); wife now competent to act as servant and earn wages, and they become her separate property (45 & 46 Vict. c. 75, s. 5).

**Mode of Constituting Contract of Service.**—At common law contract of service may be verbal or partly verbal (*Beeston v. Collyer*, 4 Bing. 309; 12 Moore, 552); all the terms of contract need not be in writing (*Johnson v. Appleby*, L. R. 9 C. P. 158; 43 L. J. C. P. 146; 30 L. T. 261; 22 W. R. 515); parol evidence may explain the particular employment if not specified in agreement (*Mumford v. Gething*, 7 C. B. (N.S.) 305; 29 L. J. C. P. 105; 6 Jur. (N.S.) 428); agreement to serve more than a year not actionable if not in writing signed by party to be charged (Stat. Frauds, 29 Ch. 2, c. 3, s. 4); verbal contracts above a year not void, though not actionable (*Leroux v. Brown*, 12 C. B. 801; 22 L. J. C. P. 1; 16 Jur. 1021); inference from conduct of parties as to varying a contract (*Williams v. Wheeler*, 8 C. B. (N.S.) 316); if no mutuality, and master not bound to employ



servant, held void (*Bealey v. Stuart*, 31 L. J. Ex. 281; 7 H. & N. 753; 8 Jur. (n.s.) 389); if servant not bound to work for master, held void (*Payne v. South Wales*, 10 Ex. 283; 24 L. J. Ex. 117; *Pilkington v. Scott*, 15 M. & W. 657; 15 L. J. Ex. 329); sufficient if consideration necessarily implied (*Powers v. Fowler*, 4 E. & B. 518); adequacy of consideration not inquired into (*Hartley v. Cumings*, 5 C. B. 247; 17 L. J. C. P. 84); sum forfeited held liquidated damages, and not a penalty (*Sainter v. Ferguson*, 7 C. B. 716; 18 L. J. C. P. 217; 13 Jur. 828); verbal contract for more than a year not enforceable under Master and Servant Act, 1867, but if to serve for a year from entry then enforceable (*Banks v. Crossland*, L. R. 10 Q. B. 97; 44 L. J. M. C. 8; 32 L. T. 226; 23 W. R. 414); enforceable, though verbal, since Employers and Workmen Act, 1878, if service entered upon (38 & 39 Vict. c. 90, s. 10); "for more than a year" includes contract of service performable in a year, but not actually so performed, or not likely to be so performed (*Souch v. Strawbridge*, 2 C. B. 808; 15 L. J. C. P. 170; 10 Jur. 357); written contract tendered by one and assented to by other is sufficient within 4th section (*Smith v. Neale*, 2 C. B. (n.s.) 67; 26 L. J. C. P. 143; 3 Jur. (n.s.) 516; *Reuss v. Picksley*, L. R. 1 Ex. 342; 35 L. J. Ex. 218; 15 L. T. 25; 14 W. R. 924); unsigned memorandum acted on may become binding (*Brogden v. Metropolitan*, 2 App. C. 666); if for more than a year, but liable to be determined within the year, yet must be in writing (*Birch v. Liverpool*, 9 B. & C. 392; *Davey v. Shannon*, 4 Ex. D. 81; 48 L. J. Ex. 459; 40 L. T. 628; 27 W. R. 599); if performed by one party within the year taken out of the Stat. Frauds (*Cherry v. Hemming*, 4 Ex. 631; 19 L. J. Ex. 63); for more than a year includes hiring for one year, but to begin some days after contract (*Bracegirdle v. Heald*, 1 B. & Ald. 722; *Britain v. Rossiter*, 11 Q. B. D. 128; 48 L. J. Ex. 362; 40 L. T. 240; 27 W. R. 482; *Snelling v. Huntingfield*, 1 C. M. R. 20; 4 Tyr. 606); but to begin at date of entry is not more than a year (*Banks v. Crossland*, L. R. 10 Q. B. 97; 44 L. J. M. C. 8; 32 L. T. 226; 23 W. R. 414); hiring for eleven months and a year thereafter is for more than a year, though determinable in a year (*Dobson v. Collis*, 1 H. & N. 81); for a year, beginning next day, whether more than a year (*Cawthorne v. Cordrey*, 13 C. B. (n.s.) 406; 32 L. J. C. P. 152); if hiring at a sum per week, held that evidence that hiring for a year was intended not admissible (*Evans v. Roe*, L. R. 7 C. P. 138; 26

L. T. 70); written contract of hiring may be in several documents (*Crane v. Powell*, L. R. 4 C. P. 123; 38 L. J. C. P. 43; 20 L. T. 703; 17 W. R. 161; *Boydell v. Drummond*, 11 East, 142); same as to lease entered into by correspondence (*Ridgway v. Wharton*, 6 H. L. C. 238; 27 L. J. Ch. 46; 4 Jur. (n.s.) 173); signature by chairman of a company's minutes sufficient within Statute of Frauds (*Jones v. Victoria*, 2 Q. B. D. 314; 46 L. J. Q. B. 219; 36 L. T. 347; 25 W. R. 501); if contract made abroad for more than a year without writing not suable here (*Leroux v. Brown*, 12 C. B. 801; 22 L. J. C. P. 1; 16 Jur. 1021); part performance does not cure defect of contract not being in writing (*Britain v. Rossiter*, 11 Q. B. D. 123; 48 L. J. Q. B. 362; 40 L. T. 240; 27 W. R. 482); court will not allow evidence to substitute other terms for written contract (*Giraud v. Richmond*, 2 C. B. 835; 15 L. J. C. P. 180; 10 Jur. 360); parol evidence admitted to ascertain subject-matter of agreement (*Mumford v. Gething*, 29 L. J. C. P. 105; 7 C. B. (n.s.) 305; 6 Jur. (n.s.) 428; parol evidence allowed to annex incidents to contract (*Hutchinson v. Tatham*, L. R. 8 C. P. 482; 42 L. J. C. P. 260; 29 L. T. 103; 22 W. R. 18; *Johnson v. Raylton*, 50 L. J. Q. B. 753; 7 Q. B. D. 438; 45 L. T. 374); acknowledgment in writing made after action brought held insufficient (*Bill v. Bament*, 9 M. & W. 36); purchaser's admission to his agent sufficient if in writing (*Gibson v. Holland*, L. R. 1 C. P. 1; 35 L. J. C. P. 5; 13 L. T. 293; 14 W. R. 86); a letter repudiating, if specific as to terms, held sufficient (*Bailey v. Sweeting*, 9 C. B. (n.s.) 843; 30 L. J. C. P. 150; 9 W. R. 273); purchaser writing on invoice safe arrival, held sufficient memorandum (*Wilkinson v. Evans*, 35 L. J. C. P. 224; L. R. 6 C. P. 407; 14 W. R. 963; 12 Jur. (n.s.) 600); series of letters sufficient memorandum (*Buxton v. Rust*, 41 L. J. Ex. 175; L. R. 7 Ex. 279; 27 L. T. 210; 20 W. R. 1014); signature by way of a stamp sufficient (*Bennett v. Brumfit*, 37 L. J. C. P. 25; L. R. 3 C. P. 28; 17 L. T. 213; 16 W. R. 131); signature by words in body of writing not usually sufficient (*Caton v. Caton*, 36 L. J. Ch. 886; L. R. 2 H. L. 127; 16 W. R. 1); seller's traveller signing purchaser's name not sufficient (*Murphy v. Boese*, 44 L. J. Ex. 41; L. R. 10 Ex. 126; 32 L. T. 122; 23 W. R. 474); sufficient signature by railway agent for both parties as to carrier's contract (*Aldridge v. G. W. R.*, 33 L. J. C. P. 161; 15 C. B. (n.s.) 582); the consideration must be stated in written contract of service

(*Sykes v. Dixon*, 9 A. & E. 693; 1 P. & D. 463); if one consideration for whole contract, and it is not in writing, not enforceable (*Cocking v. Ward*, 1 C. B. 858; 15 L. J. C. P. 246; *Hodgson v. Johnson*, 28 L. J. Q. B. 88; E. B. E. 685; 5 Jur. (n.s.) 290); a custom as to deductions, not specified in the written contract of service, rejected (*Abbott v. Bates*, 45 L. J. C. P. 117; 33 L. T. 491; 24 W. R. 101); custom as to holidays may be implied in particular trade (*R. v. Stoke*, 5 Q. B. 303; 13 L. J. Q. B. 41; 8 Jur. 34); supplementary terms may be added by parol evidence (*Johnson v. Appleby*, 43 L. J. C. P. 146; L. R. 9 C. P. 158; 30 L. T. 261; 22 W. R. 515); custom as to times of payment in theatrical matters may be implied (*Grant v. Maddox*, 15 M. & W. 737; 16 L. J. Ex. 227); rules of the workshop may be referred to as part of written contract (*Carus v. Eastwood*, 32 L. T. 855).

**Servants Working on Sunday.**—Lord's Day working, how far prohibited (29 Ch. 2, c. 7); "other person whatsoever" not including driver of stage coach (*Sandiman v. Breach*, 7 B. & C. 96; 9 D. & R. 976); held to include driver of a van (*Ex parte Middleton*, 3 B. & C. 164; 4 D. & Ry. 824); statute not including labourer assisting in carting hay for small farmer (*R. v. Cleworth*; *R. v. Silvester*, 4 B. & S. 927; 33 L. J. M. C. 79; 9 L. T. 682; 12 W. R. 375); course of ordinary calling, not including sale of horse (*Drury v. Defontaine*, 1 Taunt. 131); horse dealer's selling will be ordinary calling (*Fennell v. Ridler*, 5 B. & C. 406; 8 D. & R. 204); driving van with calves to market not driving within the statute (*Triggs v. Lester*, L. R. 1 Q. B. 259; 13 L. T. 701; 14 W. R. 279); contract entered into by agent on Sunday equally objectionable (*Smith v. Sparrow*, 4 Bing. 84; 12 Moore, 266; 2 C. & P. 544); hiring a labourer is not farmer's ordinary calling (*R. v. Whitnash*, 7 B. & C. 596; 1 M. & Ry. 452); solicitor becoming liable for client no part of ordinary calling (*Peate v. Dickens*, 1 C. M. R. 422; 5 Tyr. 116; 3 Dowl. 171); one tradesman guaranteeing servant's character no part of ordinary calling; delivery of contract on Sunday, and acted on next day, not within statute (*Norton v. Powell*, 4 M. & Gr. 42); recruiting officer enlisting soldier no part of ordinary calling (*Wolton v. Gavin*, 16 Q. B. 48; 20 L. J. Q. B. 73); work as to horse covering mare, no part of farmer's ordinary calling (*Scarfe v. Morgan*, 4 M. & W. 270); giving bill of exchange no part of ordinary



work, and not void (*Begbie v. Levi*, 1 Cr. & J. 180; 1 Tyr. 130); farmer buying from horsedealer, not knowing of dealer's calling, held no part of ordinary calling, and not void (*Bloxsome v. Williams*, 3 B. & C. 232; 5 D. & Ry. 82); barber's apprentice excused from Sunday's work (*Phillips v. Innes*, 4 Cl. & F. 234); only one penalty for several acts done on one day (*Cripps v. Durdan*, 2 Cowp. 640); prosecution to be only with certain consents (34 & 35 Vict. c. 87); penalty may be remitted (38 & 39 Vict. c. 80).

### Servants of Corporations, Companies, and Partners.—

General rule as to seal required in appointing all the higher class of servants of municipal corporations (*Ludlow v. Charlton*, 6 M. & W. 815; 8 C. & P. 242; 4 Jur. 657); parol engagements by trading corporations of servants for purposes incidental to main business held sufficient (*Re Contract Co.*, 8 Eq. 14); as colliery company engaging engineer for pumping (*South of Ireland v. Waddle*, L. R. 4 C. P. 617; 38 L. J. C. P. 338; 17 W. R. 896); as gas company (*Beverley v. Lincoln*, 6 A. & E. 829; 2 N. & P. 283); same as to shipping company (*Australian Co. v. Marzetti*, 11 Ex. 228; 24 L. J. Ex. 273); municipal corporation engaging attorney invalid for want of seal (*Arnold v. Poole*, 4 M. & G. 860; 5 Sc. N. R. 741; 12 L. J. C. P. 97; 7 Jur. 643); attorney of corporation may refer cause to arbitration without a seal (*Flaviell v. G. E. R.*, 2 Ex. 344; 17 L. J. Ex. 223; 6 D. & L. 54); resolution to raise town clerk's salary not valid without a seal (*R. v. Stamford*, 6 Q. B. 433); corporation may order payment of attorney's costs without seal (*R. v. Lichfield*, 4 Q. B. 893); resolution to appoint coal meter must have seal (*Smith v. Cartwright*, 6 Ex. 927; 20 L. J. Ex. 401); resolution appointing solicitor may be presumed to be under seal (*Thames v. Hall*, 5 M. & Gr. 274); contract to let tolls requires seal (*Kidderminster v. Hardwick*, L. R. 9 Ex. 13; 43 L. J. Ex. 9; 29 L. T. 612; 22 W. R. 160); if part performance estops company from disputing parol contract (*Hunt v. Wimbledon*, 4 C. P. D. 48; 28 L. J. C. P. 207; 40 L. T. 115; 27 W. R. 123; 43 J. P. 284); in executory and executed contract the same rule applies (*Ecclesiastical v. Merrall*, L. R. 4 Ex. 162; 38 L. J. Ex. 93; 20 L. T. 573; 17 W. R. 676); duty of company to have manager on the spot to direct servants (*Giles v. Taff*, 2 E. & B. 822; *Goff v. G. N. R.*, 30 L. J. Q. B. 148); in trifling matters parol contracts by corporations and companies valid (*Ludlow v. Charlton*, 6

M. & W. 815; *Clarke v. Cuckfield*, 21 L. J. Q. B. 349; 16 Jur. 686; this rule applies only to ordinary servants, not to special work (*Diggle v. London*, 5 Ex. 442; 19 L. J. Ex. 308; 14 Jur. 937); *Cope v. Thames*, 3 Ex. 841; 18 L. J. Ex. 345; if company's Act say contracts must be by seal, then seal imperative (*Crampton v. Varna*, 7 Ch. 562; 41 L. J. Ch. 817; 20 W. R. 713); company's appointment of solicitor void for want of seal (*Eley v. Positive*, 45 L. J. C. P. 451; 1 Ex. D. 88; 34 L. T. 190; 24 W. R. 338); Public Health Act makes seal imperative in contracts of urban authorities above 50*l.* (*Young v. Leamington*, 8 App. C. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 31 W. R. 925; 47 J. P. 660); poor law guardians bound without seal in trifling matters (*Clarke v. Cuckfield*, 21 L. J. Q. B. 349; *Nicholson v. Bradfield*, L. R. 1 Q. B. 620; 35 L. J. Q. B. 176; 14 W. R. 731; 14 L. T. 830; 30 J. P. 549); architects preparing plan of building without contract under seal not binding (*Paine v. Strand*, 8 Q. B. 326; 15 L. J. M. C. 89; 10 Jur. 308); contract to supply iron gates invalid for want of seal (*Sanders v. St. Neots*, 8 Q. B. 810; 15 L. J. M. C. 104; 10 Jur. 566); builder's contract invalid for want of seal (*Lamprell v. Billericay*, 3 Ex. 283; 18 L. J. Ex. 282); appointment of collector of rates invalid for want of seal (*Smart v. West Ham*, 11 Ex. 867; 24 L. J. Ex. 201); accountant's contract to audit accounts held valid without seal (*Haigh v. Bierley*, E. B. E. 873; 28 L. J. Q. B. 62; 6 W. R. 679; 5 Jur. 511; 23 J. P. 195); contract engaging medical officer invalid for want of seal (*Dyte v. St. Pancras*, 27 L. T. 342; 36 J. P. 375); appointment of clerk to workhouse invalid for want of seal (*Austin v. Bethnal Green*, L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. 807; 22 W. R. 406; 38 J. P. 248); Joint Stock Companies engaging servants (30 & 31 Vict. c. 131, s. 37); Companies Clauses Act, contracts of hiring (8 & 9 Vict. c. 16, s. 97); secretary not engaged pursuant to the statute (*Bill v. Darenth*, 1 H. & N. 305; 26 L. J. Ex. 81; 2 Jur. (N.S.) 595).

**Servants of a Firm of Partners.**—A partner has implied power to hire servant to serve the firm (*Beckham v. Drake*, 9 M. & W. 79); servant may be treated as servant to each of the partners (*R. v. Leech*, 3 Stark. 70); if partners give contrary orders, he may serve either (*Donaldson v. Williams*, 1 Cr. & M. 345; 3 Tyr. 371); general manager of firm not entitled to engage clerks for long periods without the surviving

partners' consent (*Beveridge v. Beveridge*, 2 Paters. 1976; L. R. 2 Sc. Ap. 183); if servant injured by negligence of one partner, the firm liable (*Ashworth v. Stanwix*, 30 L. J. Q. B. 183; 3 E. & E. 701; 4 L. T. 85; 7 Jur. (n.s.) 467); one of firm acting as superintendent and personally negligent, binds firm (*Mellors v. Shaw*, 1 B. & S. 437; 30 L. J. Q. B. 333).

**Servants Hired by Married Women.**—Wife living with husband and hiring servant presumed to act as agent of husband; if living apart, jury may also infer agency (*Johnson v. Sumner*, 3 H. & N. 261; 27 L. J. Ex. 341; 4 Jur. (n.s.) 462); living apart by consent on allowance, held no agency (*Biffen v. Bignell*, 31 L. J. Ex. 189; 7 H. & N. 877; 6 L. T. 248; 8 Jur. (n.s.) 647; 10 W. R. 322; wife's implied authority rebuttable by parol evidence (*Jolly v. Rees*, 33 L. J. C. P. 177; 15 C. B. (n.s.) 628; 10 L. T. 299; 12 W. R. 473); wife living with husband and representing her authority held *prima facie* evidence (*Jewsbury v. Newbold*, 26 L. J. Ex. 247); if wife already provided with money, husband not liable (*Debenham v. Mellon*, 6 App. C. 24; 50 L. J. Q. B. 155; 43 L. T. 673; 29 W. R. 141; 45 J. P. 252); if wife separated, the presumption is against husband being liable (*Clifford v. Laton*, M. & M. 101; 3 C. & P. 15); if wife order goods to house of third person, husband not liable (*Reeve v. Coningham*, 2 C. & K. 444); wife having separate estate may be bound to pay servants she has engaged (*Shattock v. Shattock*, 35 Beav. 489; 2 Eq. 182; 35 L. J. Ch. 509; 14 L. T. 452; 14 W. R. 600; if money to separate use, whole *corpus* is vested in wife (*London v. Lempriere*, 4 Pr. C. 572; 42 L. J. Pr. C. 49; 29 L. T. 186; 21 W. R. 513; 9 Moo. P. C. (n.s.) 426; separate estate must be vested in wife at date of engagement (*King v. Lucas*, 53 L. J. Ch. 64; 23 Ch. D. 712; 49 L. T. 216; 31 W. R. 904).

**Stamp on Contracts of Hiring.**—Exemptions allowed (33 & 34 Vict. c. 97, s. 39, and sched.); stoker on steamship held a labourer or artificer (*Wilson v. Zulueta*, 14 Q. B. 405; 19 L. J. Q. B. 49; 14 Jur. 366); employed to look after glebe held a labourer (*R. v. Wortley*, 2 Den. C. 333; 21 L. J. M. C. 44; 15 Jur. 1137); overseer in printing office held an artificer, and exempt (*Bishop v. Letts*, 1 F. & F. 401); contract to make chattel not a hiring but a sale (*Pinner v. Arnold*, 2 C. M. R. 613; 1 Tyr. & G. 1); agreement to quarry stone

held not a labourer nor artificer (*Hughes v. Budd*, 8 Dowl. 478); agreement to supply and fix a plate and cloth boiler held not exempt as being for hiring or for goods (*Chanter v. Dickenson*, 5 M. & Gr. 253; 6 Sc. N. R. 182; 12 L. J. C. P. 147; 7 Jur. 89); if one contract mixed with other contract, held a question which is primary object (*Smith v. Cater*, 2 B. & Ald. 778; *Chatfield v. Cox*, 18 Q. B. 321; 21 L. J. Q. B. 279; 16 Jur. 594); agreement subject to stamp means what would be evidence against both parties (*Knight v. Barber*, 16 M. & W. 66; 16 L. J. Ex. 18); letter of allotment not requiring stamp (*Vollans v. Fletcher*, 1 Ex. 20); a mere memorandum of something pursuant to a contract exempt from stamp (*Marshall v. Powell*, 9 Q. B. 779; 16 L. J. Q. B. 5; 11 Jur. 61); some apprenticeship writings exempt from stamp (33 & 34 Vict. c. 97, s. 39, sched.); indenture to serve two masters in succession, one stamp only needed (*R. v. Louth*, 8 B. & C. 247; 2 M. & Ry. 273); seamen's indentures exempt from stamp (17 & 18 Vict. c. 104, s. 143).

**Consideration of Contract of Service.**—Consideration for making and assigning articles of apprenticeship to be truly stated (33 & 34 Vict. c. 97, s. 40); no consideration need be stated for assigning parish apprentice (*R. v. Ide*, 2 B. & Ad. 867); assignment with new terms, no stamp required (*Morris v. Cox*, 2 M. & Gr. 659; 3 Sc. N. R. 116; 9 Dowl. 661; 5 Jur. 367); no consideration need be stated if nothing paid to master (*R. v. Leighton*, 4 T. R. 732); no stamp duty, if part of apprentice's wages to be paid to master (*R. v. Wantage*, 1 East, 601); no stamp where father to find clothes and washing (*R. v. Aylesbury*, 3 B. & Ad. 569); consideration to be the sum actually paid, not what was agreed to be paid (*King v. Low*, 3 C. & P. 620); consideration need state only what is validly agreed to be paid (*R. v. Burton*, 9 B. & C. 872; 3 M. & Ry. 631); wrong date not invalidating apprenticeship indenture (*R. v. Harrington*, 4 A. & E. 618; 6 N. & M. 165); if collateral agreement to pay more than the consideration money inserted, whether immaterial (*Hawkins v. Clutterbuck*, 2 C. & K. 811); if something paid beyond, held void (*R. v. Baidon*, 3 B. & Ad. 427); if larger sum inserted in deed than actually paid, sufficient (*R. v. Amersham*, 4 A. & E. 508; 6 N. & M. 12; *R. v. Keynsham*, 5 East. 309); if consideration untruly stated, party paying it not entitled to recover back (*Stokes v. Twitchen*, 8 Taunt.

492; 2 Moore, 538); as to action to recover sum agreed when indenture void (*Westlake v. Adams*, 5 C. B. (N.S.) 248; 27 L. J. C. P. 271; 4 Jur. (N.S.) 1021); sum not recoverable back when stamp insufficient (*Mann v. Lent*, 10 B. & C. 877); where statute of frauds requires writing, the consideration must be in writing (*Wain v. Walters*, 5 East, 10); in other cases part of the terms may be verbal and part in writing (*Johnson v. Appleby*, L. R. 9 C. P. 158; 43 L. J. C. P. 146; 30 L. T. 261; 22 W. R. 515); something of value as a consideration for hiring must exist, but if any wages, courts do not inquire further (*Hitchcock v. Coker*, 6 A. & E. 438; 1 N. & P. 796); wages or remuneration must arise from contract, if work is not that of a servant (*Dunston v. Imperial*, 3 B. & Ad. 125); verbal promise to work without wages not binding (*Lambert v. Northern*, 18 W. R. 180).

**Finding Work for Servant.**—Parol agreement to hire as collier at certain payment for work done, held no obligation to find work (*Williamson v. Taylor*, 5 Q. B. 175; 13 L. J. Q. B. 81); deed to serve A. as apprentice for a term, A. to pay certain wages, held no obligation to keep him employed (*Dunn v. Sayles*, 5 Q. B. 685; 13 L. J. Q. B. 159); purchasing business, agreeing to pay share of earnings, held impliedly bound to continue the business (*Macintyre v. Belcher*, 32 L. J. C. P. 254); promising gratuity at end of term does not prevent determination of the term (*Parker v. Ibbetson*, 4 C. B. (N.S.) 346; 27 L. J. C. P. 236; 4 Jur. (N.S.) 536); agreeing to serve in consideration of agreeing to employ, whether binding contract (*Payne v. New South Wales*, 10 Ex. 283; 24 L. J. Ex. 117); traveller engaged, but no mode of accounting set out, held their practice for a time defined the contract as to this (*Hunter v. Belcher*, 10 L. T. 548); agreement to serve till notice given, implied that master bound to find work (*Whittle v. Frankland*, 2 B. & S. 49; 31 L. J. M. C. 81; 5 L. T. 639; 8 Jur. (N.S.) 382); agreement to serve for twelve months, as to finding work to do (*R. v. Welch*, 2 E. & B. 357; 22 L. J. M. C. 145; 17 Jur. 1007); agreement to employ A., and A. to serve for seven years, is no implied condition to find work for A. (*Rhodes v. Forwood*, 1 App. C. 256; 47 L. J. Ex. 396; 34 L. T. 890; 24 W. R. 1078); agreement by B. to provide cartage for a year for A. at a certain rate, held B. not bound to supply A. (*Burton v. G. N. R.*, 9 Ex. 507; 23 L. J. Ex. 184); servant engaged for a term and master refusing to



give work, held no defence to action for wages (*Cook v. Sherwood*, 11 W. R. 595); company agreeing to appoint A. as agent, and if A. displaced, to pay A. a sum, held an implied contract to continue to employ A. (*Stirling v. Maitland*, 5 B. & S. 840); company agreeing to appoint A. as agent for five years, and to pay commission and a salary, company wound up, held bound to pay the salary but not commission (*Ex parte Maclure*, 5 Ch. 737; 39 L. J. Ch. 685; 23 L. T. 685; 18 W. R. 1122); company engaging traveller for five years at a commission wound up, held bound to compensate for the commission (*Re Patent Floor*, 41 L. J. Ch. 476; 26 L. T. (n.s.) 467); contract to employ B. at certain wages for work done, held no obligation to find work for B. (*Churchward v. R.*, L. R. 1 Q. B. 195; 6 B. & S. 808); surgeon engaging assistant and binding him after being qualified not to practice within certain limits, held implied that the employment was to continue till qualification (*Gravelly v. Barnard*, 18 Eq. 578; 43 L. J. Ch. 659; 30 L. T. 863); if terms on one side minutely stated, the other side will be impliedly bound for same period, as seven years as crown glass maker (*Pilkington v. Scott*, 15 M. & W. 657); master held bound to find work for seven years where servant prevented by contract from working for others (*Hartley v. Cummings*, 5 C. B. 247; 17 L. J. C. P. 84; 2 C. & K. 433; 12 Jur. 57); terms on both sides, and proviso for either to give three months' notice to determine service, held binding on master (*R. v. Welch*, 2 E. & B. 357; 22 L. J. M. C. 145); if mere parol agreement to appoint A. solicitor, held no obligation to find work for A. is implied (*Emmens v. Elderton*, 4 H. L. C. 624; 13 C. B. 495; 18 Jur. 21); parol agreement to serve twelve months, but nothing said about wages, held not binding though service performed (*Sykes v. Dixon*, 9 A. & E. 693; 1 P. & D. 463); by accepting contractor's offer no implied contract that the plan can be carried out (*Thorn v. London*, 1 App. C. 120; 45 L. J. Ex. 487; 34 L. T. 545; 24 W. R. 932); if one bound, the other must be deemed bound, if no seal of corporation not binding on contractor (*Kidderminster v. Hardwick*, L. R. 9 Ex. 13; 43 L. J. Ex. 9; 29 L. T. 612; 22 W. R. 160; *Arnold v. Poole*, 4 M. & Gr. 860; 5 Sc. N. R. 741; 12 L. J. C. P. 97); mutuality implied in collier's contract so as to find work for servant (*Whittle v. Frankland*, 2 B. & S. 55; 31 L. J. M. C. 81; 5 L. T. (n.s.) 639; 8 Jur. (n.s.) 382); want of mutuality no objection to an injunction (*Donnell v. Bennett*, 22

Ch. D. 835; 52 L. J. Ch. 414; 48 L. T. 68; 31 W. R. 316; 47 J. P. 342); injunction granted though previous attempt to set aside contract (*Bucket v. Bates*, 35 L. J. Ch. 324; 1 Ch. 117; 13 L. T. 656); no objection to injunction that contract of service not compellable (*Lumley v. Wagner*, 1 De G. M. & G. 604; 21 L. J. Ch. 898; 16 Jur. 871); breach of a negative covenant restrained by injunction (*Peto v. Brighton*, 52 L. J. Ch. 677; 1 H. & M. 468; 11 W. R. 874); theatrical contracts, remedy by injunction (*Montague v. Flockton*, 16 Eq. 189; 42 L. J. Ch. 677; 28 L. T. 580; 21 W. R. 668); injunction not granted against quondam servant merely for using trade secrets (*Reuter v. Byron*, 43 L. J. Ch. 661; *Estcourt v. Estcourt*, 44 L. J. Ch. 223; 10 Ch. 276; 32 L. T. 80; 23 W. R. 313); injunction granted to prevent quondam servant slandering employer (*Loog v. Bean* (not rep.), 1884).

**Immoral and Illegal Contracts of Hiring not Enforceable.**—Prostitute hiring a brougham, no remedy given (*Pearce v. Brooks*, L. R. 1 Ex. 213; 35 L. J. Ex. 134; 14 L. T. 288; 14 W. R. 614; 12 Jur. (n.s.) 342); hiring lodgings by prostitute, no action allowed (*Girardy v. Richardson*, 1 Esp. 13; 1 B. & P. 340); lending money to carry on unlicensed theatre, no action for breach (*De Begnis v. Armistead*, 10 Bing. 107; 3 M. & Sc. 511); engineer suing for commission for getting tender accepted, held void contract (*Harrington v. Victoria*, 3 Q. B. D. 549; 47 L. J. Q. B. 594; 39 L. T. 120; 26 W. R. 740); unlicensed broker suing for commission, no action allowed (*Cope v. Rolands*, 2 M. & W. 149; 2 Gale, 231); contract to do what violates law not actionable, though parties ignorant (*Waugh v. Morris*, L. R. 8 Q. B. 202; 42 L. J. Q. B. 57; 28 L. T. 265; 21 W. R. 438); clerk of peace selling profits, invalid contract (*Palmer v. Bate*, 2 B. & B. 673; 6 Moore, 28); selling profits of public office, as in dockyard (*Parsons v. Thompson*, 1 H. Bl. 322); clerk of peace commuting with corporation for fixed salary held illegal (*Liverpool v. Wright*, 1 Johns. 359; 28 L. J. Ch. 868; 5 Jur. (n.s.) 1156); contract to serve partly for immoral object, as cohabitation, held void and parol evidence admitted (*R. v. Northwingsfield*, 1 B. & Ad. 912; *Bradshaw v. Hayward*, Car. & M. 591); agreement to sell oil for A. at weekly wages, and after engagement not to sell oil for a year within eight miles, held a fair consideration (*Middleton v. Brown*, 47 L. J. Ch. 411; 38

L. T. 334); if one of considerations illegal, the whole bad unless severable (*Nicholls v. Stretton*, 10 Q. B. 346; 11 Jur. 1009; 7 Beav. 42); promise to pay if wife will execute deed of separation, not illegal (*Jones v. Wade*, 9 Cl. & F. 88); 4 M. & Gr. 1104); contracts of service held to be in restraint of trade (*Hilton v. Eckersley*, 6 E. & B. 66; 25 L. J. Q. B. 199; 2 Jur. (n.s.) 587; bond not to trade as a coal merchant after leaving an employment held void (*Ward v. Byrne*, 5 M. & W. 548; 3 Jur. 1175); agreement to serve surgeon-dentist and then not to practice in London or any town in England where employer practised, held part of agreement void, the rest good (*Mallan v. May*, 11 M. & W. 853; 12 L. J. Ex. 376; 7 Jur. 536); agreement not to carry on business as stevedore illegal unless partial and for good consideration (*Collins v. Locke*, 4 App. C. 674; 48 L. J. Pr. C. 68; 41 L. T. 292; 28 W. R. 189); commercial traveller giving bond to pay a sum if he acted for another house, held a good consideration (*Mumford v. Gething*, 7 C. B. (n.s.) 305; 29 L. J. C. P. 105; 6 Jur. (n.s.) 428); partial restraint of trade for a valuable consideration held valid (*Gravelly v. Barnard*, 18 Eq. 518; 43 L. J. Ch. 659; 30 L. T. 863); agreement to serve as shopman and afterwards not to open shop within a mile, held binding though original shop given up (*Jacoby v. Whitmore*, 49 L. T. 335; 32 W. R. 18); traveller engaging not to solicit orders for two years after leaving employment, held void contract (*Allsop v. Wheatcroft*, 15 Eq. 59; 42 L. J. Ch. 12; 27 L. T. 372; 21 W. R. 162); agreement held partly good and partly bad as to restraint of trade (*Price v. Green*, 16 M. & W. 346; 16 L. J. Ex. 108; 9 Jur. 880); court to decide when circumstances arise (*Tallis v. Tallis*, 1 E. & B. 391; 22 L. J. Q. B. 185; 17 Jur. 1146); carrying on trade includes acting as foreman to another in same trade (*Newling v. Dobell*, 38 L. J. Ch. 111; 19 L. T. 408); but not soliciting orders as servant for another in the trade (*Allen v. Taylor*, 39 L. J. Ch. 627; 24 L. T. 249; 19 W. R. 993); travelling for brewer no breach of covenant as to spirit merchant (*Josselyn v. Parson*, 1 L. R. 7 Ex. 127; 41 L. J. Ex. 60; 25 L. T. 918; 20 W. R. 316); milkman on weekly hiring agreeing afterwards not to trade in milk for two years within two miles, held valid though an infant (*Cornwall v. Hawkins*, 41 L. J. Ch. 435; 26 L. T. 607; 20 W. R. 653); not to carry on trade directly or indirectly includes acting as foreman (*Jones v. Heavens*, 4 Ch. D. 636; 25 W. R. 460); not to supply includes



supplying from outside the district though no shop within it (*Turner v. Evans*, 2 E. & B. 512; 22 L. J. Q. B. 412; 2 De G. M. & G. 740).

**Term of Hiring.**—Presumption of hiring some servants for a year, as in husbandry (*Lilley v. Elwin*, 11 Q. B. 742; 17 L. J. Q. B. 132; 12 Jur. 623); as to editor, the rule flexible (*Baxter v. Nurse*, 6 M. & Gr. 938; 7 Sc. N. R. 801); though wages paid monthly as a warehouseman, yet a yearly hiring (*Fawcett v. Cash*, 5 B. & Ad. 904; 3 N. & M. 177); clerk paid monthly, but hired for a year (*Beeston v. Collier*, 4 Bing. 309; 12 Moore, 552); as to manufacturer's foreman, a yearly hiring (*Turner v. Robinson*, 2 N. & M. 829; 5 B. & Ad. 789); as to master of a ship hired at a salary per year, reasonable notice required (*Green v. Wright*, 1 C. P. D. 591; 35 L. T. 339); if presumption for a yearly hiring confined to menial servants (*Fairman v. Oakford*, 5 H. & N. 635; 29 L. J. Ex. 459); presumption is for a year, whether contract in writing or not, a solicitor at a salary (*Emmens v. Elderton*, 4 H. L. C. 624; 13 C. B. 495; 18 Jur. 21); service held good for a year, though determinable before that date (*R. v. Sandhurst*, 7 B. & C. 557); though determinable on a condition, yet held good for a year if condition avoided (*R. v. Byker*, 2 B. & C. 114); engineer at 500*l.* a year held yearly hiring for one year certain (*Buckingham v. Surrey*, 46 L. T. 885; 46 J. P. 774); if no clear term of hiring, a *quantum meruit* recoverable (*Bayley v. Rimmell*, 1 M. & W. 506); if traveller paid by commission, no presumption of a yearly hiring (*Nayler v. Yearsley*, 2 F. & F. 41); if wages of horse-keeper paid by week or month, presumption may be of weekly or monthly hiring (*R. v. St. Andrew's*, 8 B. & C. 679); hiring per week, &c., month's notice, held yearly hiring (*R. v. Yarmouth*, 5 M. & S. 117); if servant in husbandry, reasonable to presume hiring for a year (*R. v. Dodderhill*, 3 M. & S. 243); hiring at per week held not a yearly hiring (*R. v. Lambeth*, 4 M. & S. 315); as ostler, held weekly hiring only (*R. v. Rolvenden*, 1 M. & Ry. 689); manager of shop paid monthly, yet held hired for a year (*Davis v. Marshall*, 4 L. T. (N.S.) 216; 9 W. R. 520); hired at two guineas a week for one year, held a hiring by week (*Robertson v. Jenner*, 15 L. T. 514); custom of hiring editors is a year, but none as to new publication (*Baxter v. Nurse*, 6 M. & Gr. 938; 13 L. J. C. P. 82); as sub-editor or reporter held a yearly hiring by custom (*Holcroft v. Barber*, 1 C. & K. 4),

foreman hired at 2*l.* a week and house to live in, held weekly hiring (*Evans v. Roe*, L. R. 7 C. P. 138; 26 L. T. 70); length of notice on weekly hirings; hiring of furnished house (*Towne v. Campbell*, 3 C. B. 921; 16 L. J. C. P. 104); a week's notice necessary (*Jones v. Mills*, 10 C. B. (N.S.) 788; 31 L. J. C. P. 66; 8 Jur. (N.S.) 387); piecework paid weekly held not a weekly hiring (*Warburton v. Heyworth*, 6 Q. B. D. 1; 50 L. J. Q. B. 137; 43 L. T. 461; 29 W. R. 91; 45 J. P. 38); boy hired by farmer for meat and clothes held hiring at will (*R. v. Christ's Parish*, 3 B. & C. 459); ostler, free board, to get what he can, no hiring (*R. v. Bowden*, 7 B. & C. 249); hired at 6*s.* a week in winter, and 9*s.* a week in summer, not yearly hiring (*R. v. Warminster*, 6 B. & C. 77); hired for 11 months, then told to stay on, held yearly hiring (*R. v. Macclesfield*, 3 T. R. 76); commercial traveller for twelve months certain, at yearly salary, and so on till three months' notice, held terminable at end of year by notice (*Brown v. Symons*, 8 C. B. (N.S.) 208; 29 L. J. C. P. 251; 6 Jur. (N.S.) 1079; 8 W. R. 460); hired at 200*l.* a year, paid fortnightly, for twelve months certain, held yearly hiring, and ceased at end of year (*Langton v. Carleton*, L. R. 9 Ex. 57; 43 L. J. Ex. 54; 29 L. T. 650); strong presumption of yearly hiring after service for more than a year as a husbandman (*R. v. Lythe*, 5 T. R. 329); after three years' service, at weekly wages, yearly hiring presumed (*R. v. Pendleton*, 15 East, 449); indefinite hiring for meat and drink held hiring for a year (*R. v. Worfield*, 5 T. R. 506); after three years a hiring for a year presumed (*R. v. Whatton*, 5 T. R. 447; *R. v. Byker*, 2 B. & C. 114); service as boots for three years and more, held yearly hiring (*R. v. St. Martin's*, 8 B. & C. 674); service as author to write tales in magazine extending over a year, paid weekly, held yearly hiring (*Stiff v. Cassell*, 2 Jur. (N.S.) 348).

**Rule as to Notice in case of Menial Servants.**—Domestic servant presumed to serve for a year, but subject to a month's notice and to obeying lawful commands (*Turner v. Mason*, 14 M. & W. 112); sum per week, no term stated, held menial servant at weekly wages; rule as to yearly hiring (*R. v. Pucklechurch*, 5 East, 384); head gardener, living out of doors, held menial (*Nowlan v. Ablett*, 2 C. M. R. 54; 5 Tyr. 709); housekeeper of large hotel not menial servant (*Lawler v. Linden*, 10 Ir. R. C. L. 188); servant to work in garden, held menial (*Johnson v. Blenkinsop*, 5 Jur. 870);

huntsman held menial (*Nicoll v. Greaves*, 17 C. B. (N.S.) 27; 33 L. J. C. P. 259; 10 L. T. 531; 12 W. R. 961; 10 Jur. (N.S.) 919); governess, at yearly salary, held not menial (*Todd v. Kerrich*, 8 Ex. 151; 22 L. J. Ex. 1; 17 Jur. 119); month's wages mean calendar month, but not board wages (*Gordon v. Potter*, 1 F. & F. 644); month's wages, in lieu of notice, are not for past service but for compensation (*Fewings v. Tisdal*, 1 Ex. 295); month's wages the settled amount of compensation damages for menial servant (*Robinson v. Hindman*, 3 Esp. 235).

**Length of Notice to Leave Service.**—Length of notice to leave regulated chiefly by custom, except as to menial servants; month's notice not applicable to servants in husbandry (*Lily v. Elwin*, 11 Q. B. 742; 17 L. J. Q. B. 132; 12 Jur. 623); nor to clerks hired generally (*Beeston v. Collyer*, 4 Bing. 309; 12 Moore, 552); clerk engaged at yearly salary and serving a little beyond a year, if wages recoverable for broken time (*Huttman v. Boulnois*, 2 C. & P. 510); month's notice not applying to newspaper reporters (*Williams v. Byrne*, 7 A. & E. 177; 2 N. & P. 139; 1 Jur. 578); nor to governess (*Todd v. Kerrich*, 8 Ex. 151; 22 L. J. Ex. 1; 17 Jur. 119); if length of notice stipulated, it may be consistent also with yearly hiring, as "at yearly salary for three years at least at my option" (*Down v. Pinto*, 9 Ex. 327; 23 L. J. 103); to serve as steward at yearly sum and three months' notice, held a hiring for a year (*Forgan v. Burke*, 12 Ir. C. L. 495); commercial traveller at yearly salary, paid quarterly, held hiring for a year certain, and three months' notice thereafter (*Brown v. Symonds*, 8 C. B. (N.S.) 208; 29 L. J. C. P. 251); same hired for year certain, with three months' notice afterwards (*Langton v. Carleton*, L. R. 9 Ex. 57; 43 L. J. Ex. 54; 29 L. T. 650); manufacturer's agent at yearly salary, held a usage was well proved as to month's notice (*Parker v. Ibbetson*, 4 C. B. (N.S.) 346; 27 L. J. C. P. 236; 4 Jur. (N.S.) 536); no custom provable to dismiss without any notice (*Peters v. Stavely*, 15 L. T. 275); advertising agent, such notice allowed as jury think reasonable (*Hiscox v. Batchellor*, 15 L. T. 543); a custom as to notice must be reasonably ancient and uniform (*Foxall v. International*, 16 L. T. 637); manager of shop at salary dismissed and suing for residue (*Davis v. Marshall*, 9 W. R. 520); hiring of master of ship and power to dismiss him abroad without notice, held not to govern dismissal at home (*Green*

v. *Wright*, 1 C. P. D. 591 ; 35 L. T. 339) ; indefinite hiring of clerk, three months' notice usually implied (*Fairman v. Oakford*, 5 H. & N. 636 ; 29 L. J. Ex. 459).

**Rule as to Notice terminating in Tenancies at end of a full year not applied to Hiring of Servants.**—As to schoolmaster (*Ryan v. Jenkinson*, 25 L. J. Q. B. 11) ; nor as to clerk (*Beeston v. Collyer*, 4 Bing. 309 ; 12 Moo. 552) ; nor as to commission agent (*Keon v. Hart*, 3 Ir. R. C. L. 388) ; nor clerk (*Fawcett v. Cash*, 5 B. & Ad. 904) ; nor as to chemist's assistant (*Broxham v. Wagstaffe*, 5 Jur. 845) ; nor as to commercial traveller (*Metzner v. Bolton*, 9 Ex. 518).

**Death or Bankruptcy of Parties and Wages when preferable to Debts.**—Servants of company in liquidation to be paid as in bankruptcy, workmen to be paid in full (*Re Norton*, 26 W. R. 53 ; *Re Association*, 16 Ch. D. 373 ; 50 L. J. Ch. 201 ; 43 L. T. 753 ; 29 W. R. 277) ; *Re Albion*, 7 Ch. D. 547 ; 47 L. J. Ch. 229 ; 38 L. T. 207 ; 26 W. R. 348) ; manager of company ordered to be paid in full (*Re Imperial*, 14 Eq. 417 ; 42 L. J. Ch. 5 ; 20 W. R. 966) ; proportion of salary after winding up, how calculated (*Yelland's case*, 4 Eq. 350 ; *Re London*, 7 Eq. 550 ; 38 L. J. Ch. 562 ; 20 L. T. 774) ; loss of prospective commission as agent not allowed (*Ex parte Machure*, 5 Ch. 737 ; 39 L. J. Ch. 685) ; on masters' bankruptcy clerks and servants to have four months' wages, if not exceeding 50*l.* (46 & 47 Vict. c. 52, s. 40) ; if rule applies to compositions (*Ex parte Walter*, 15 Eq. 412 ; 42 L. J. Bk. 49 ; 21 W. R. 523) ; servants not to wait result of debtor's examination (*Ex parte Powis*, 17 Eq. 130 ; 43 L. J. Bk. 24 ; 29 L. T. 654 ; 22 W. R. 218) ; clerk hired generally to be paid weekly, held a servant (*Ex parte Humphreys*, M. & Bl. 413 ; 3 Deac. & Ch. 114) ; clerk who had been obliged to leave for non-payment of wages held entitled as servant (*Ex parte Sanders*, 2 Mont. & A. 684 ; 2 Deac. 40) ; manager of cotton mill paid weekly, held a servant if hiring for more than week (*Ex parte Collier*, 2 Mont. & A. 29 ; 4 D. & Ch. 520) ; clerk absent from ill-health held a servant and entitled (*Ex parte Harris*, 1 De G. 165 ; 14 L. J. Bk. 26 ; 9 Jur. 497) ; cashier at a salary not fixed for three years held entitled as servant (*Ex parte Hickin*, 3 De G. & S. 662 ; 19 L. J. Bk. 3 ; 14 Jur. 405) ; clerk engaged only in evenings to keep books held a servant (*Ex parte Oldham*, 32 L. T. 181) ; newspaper editor at weekly salary and a month's notice held servant (*Ex parte Chipchase*, 7



L. T. 290; 11 W. R. 11); workmen by the piece held not servants (*Ex parte Grellier*, 1 Mont. 264); weekly labourers' bricklayers held not servants (*Ex parte Crawfoot*, 1 Mont. 270); clerk who has voluntarily left held not a servant (*Ex parte Bennett*, 3 Mont. & A. 669; *Ex parte Gee*, 1 Mont. & C. 99; 8 L. J. Bk. 31); drawers paid by and attending colliers held not servants (*Ex parte Ball*, 3 De G. M. & G. 155; 22 L. J. Bk. 27); clerk paid by commission on goods sold held not a servant (*Ex parte Simmons*, 30 L. T. 311); a drill sergeant and music master attending a school of debtor twice a week, held not a servant (*Ex parte Waller*, 15 Eq. 412; 42 L. J. Bk. 49; 21 W. R. 523); whether misconduct of clerk can be set up in answer to claim of wages (*Ex parte Hampson*, 2 M. D. & De G. 462; 11 L. J. Bk. 12; 6 Jur. 376); death of servant usually discharges contract (*Farrow v. Wilson*, L. R. 4 C. P. 744; 38 L. J. C. P. 326; 20 L. T. 810; 18 W. R. 43); leaving by mutual consent, nothing said as to broken time, superintendent of packing company (*Lamburn v. Cruden*, 2 M. & Gr. 253); assistant surgeon suing for services till he left, by consent, for illness (*Bailey v. Rimell*, 1 M. & W. 506); boy on trial as apprentice, dismissed before end of trial, compensation (*Phillips v. Jones*, 1 A. & E. 333); servant of firm, and one dying, how far implied that servant must serve survivors (*Tasker v. Shepherd*, 6 H. & N. 575; 20 L. J. Ex. 207); if servant become bankrupt, how far surplus, beyond a maintenance, passes to his assignees (*Elliot v. Clayton*, 16 Q. B. 581; 20 L. J. Q. B. 217; 15 Jur. 293); architect's earnings pass to his bankrupt trustee (*Emden v. Carte*, 51 L. J. Ch. 41; 17 Ch. D. 768; 44 L. T. 636); if no fault of master, and apprentice enlist, no premium returnable (*Cuff v. Brown*, 5 Price, 297); on death of master-watchmaker, in second year of a six years' term, no premium returnable (*Whincup v. Hughes*, L. R. 6 C. P. 78); on certificate of ill health as engineer, premium to be returned, certificate held after death sufficient (*Derby v. Humber*, L. R. 2 C. P. 247); justices in some cases discharging employers from contract (38 & 39 Vict. c. 90); executors of deceased master not bound to pay wages in preference (Wms. Ex. 1029 n.); legacy to servant not presumed to be in satisfaction of wages due (*Richardson v. Greese*, 3 Atk. 69; *Mathew v. M.*, 2 Ves. Sr. 636); legacy to A., if in my service at my death, not applicable if A. left a few days before (*Darlow v. Edwards*, 1 H. & C. 547; 32 L. J. Ex. 51; 6 L. T. 905; 10 W. R. 700; 9 Jur. (N.S.) 336).

## CHAPTER II.

### MASTER'S POWERS, DUTIES, AND OBLIGATIONS TO SERVANTS.

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**Power to Correct Servant.**—No implied authority, either of master or fellow-servant, to strike a servant (*R. v. Huntley*, 3 C. & K. 142); master, no right to enforce medical inspection of servant's person (*Latter v. Braddell*, 44 L. T. 369; 50 L. J. Q. B. 448; 29 W. R. 366; 45 J. P. 520); whether any implied power to strike an apprentice (*Penn v. Ward*, 2 C. M. R. 338); implied power exists to strike or imprison seaman, if mutinous, while at sea (*Lamb v. Burnett*, 1 Cr. & J. 291; 1 Tyr. 265); respectability of mate who is flogged not material as a defence (*Rhodes v. Leach*, 2 Stark, 516); offences against discipline at sea (17 & 18 Vict. c. 104, s. 243); whenever lawful to punish seamen on the spot, must be moderate punishment, and damages proportioned to actual suffering (*Watson v. Christie*, 2 B. & P. 224); and after preliminary inquiry (17 & 18 Vict. c. 104, s. 244); duty of captain to inquire and enter circumstance in log-book (*Murray v. Moutrie*, 6 C. & P. 471).

**Master's Action for Enticing away or Causing Injury to Servant.**—At common law action lies for knowingly enticing and employing another servant (*Blake v. Lanyon*, 6 T. R. 221); action not maintainable, if master has been

satisfied for the breach (*Bird v. Randall*, 1 W. Bl. 373; 3 Burr. 1345); enticing away opera singer, and causing breach of contract, so as to injure employer, held actionable (*Lumley v. Gye*, 2 E. & B. 216; 22 L. J. Q. B. 463; 17 Jur. 827); if enticing is effectual, and injury caused by breach of contract with employer, then action lies (*Bowen v. Hall*, 6 Q. B. D. 333; 50 L. J. Q. B. 305; 44 L. T. 75; 29 W. R. 367; 45 J. P. 373); enticing person who is *quasi* servant, though no express contract of service, held actionable (*Evans v. Walton*, L. R. 2 C. P. 615; 36 L. J. C. P. 307; 17 L. T. 92; 15 W. R. 1062); if contract of service void, this is good defence to action for enticing (*Sykes v. Dixon*, 9 A. & E. 693; 1 P. & D. 463); measure of damages for enticing away servant, how far the actual loss sustained (*Gunter v. Astor*, 4 Moore, 12; *Dixon v. Bell*, 5 M. & S. 198; 1 Stark. 287); action lies against stranger who negligently injures servant, causing loss of service (*Martinez v. Geber*, 3 M. & Gr. 88; 3 Sc. N. R. 386; 5 Jur. 463); master cannot sue railway company for loss of service caused by accident to servant, unless master a party to contract on which action brought (*Alton v Mid. R.*, 19 C. B. (N.S.) 213; 34 L. J. C. P. 292; 12 L. T. 703; 13 W. R. 918; 11 Jur. (N.S.) 672); if action is brought irrespective of contract, action of master lies (*Berringer v. G. E. R.*, 4 C. P. D. 163; 48 L. J. C. P. 400; 27 W. R. 681); if master sue for injury causing death of servant, no defence allowed that act was a felony (*Osborne v. Gillett*, L. R. 8 Ex. 88; 42 L. J. Ex. 53; 28 L. T. 197; 21 W. R. 409).

**Master's Action for Seduction of Servant.**—Loss of service an essential part of cause of action (*Saterthwaite v. Duerst*, 4 Doug. 315; 5 East. 47 n); parent can only sue *qua* master for daughter's seduction (*Grinell v. Wells*, 7 M. & Gr. 1033; 8 Sc. N. R. 741; 14 L. J. C. P. 19; 8 Jur. 1101); father *qua* father is a master (*Evans v. Walton*, L. R. 2 C. P. 615; 36 L. J. C. P. 307; 17 L. T. 92; 15 W. R. 1062); verdict set aside for giving damages beyond mere loss of service (*Irwin v. Dearman*, 11 East. 24); though daughter on temporary service away from father, it is sufficient to ground action (*Griffiths v. Teetgen*, 15 C. B. 344; 24 L. J. C. P. 35; 1 Jur. (N.S.) 426); on her way home to father's house, she is sufficiently in service of father (*Terry v. Hutchinson*, L. R. 3 Q. B. 599; 37 L. J. Q. B. 257; 18 L. T. 521; 16 W. R. 932; 9 B. & S. 487); married



daughter living separate from husband and with father, sufficiently his servant (*Harper v. Luffkin*, 7 B. & C. 387; 1 M. & Ry. 166); engaging servant for purpose of seduction sufficient to ground action by father (*Speight v. Oliveira*, 2 Stark. 493); if daughter has house of her own, and maintains mother, no ground for action (*Manley v. Field*, 7 C. B. (N.S.) 96; 29 L. J. C. P. 79; 6 Jur. (N.S.) 300); if she is in service of other than father, but visiting him occasionally, no action by father (*Dean v. Peel*, 5 East, 47); if in another's service at date of seduction, or not in parent's service, no action by parent (*Hedges v. Tagg*, L. R. 7 Ex. 283; 41 L. J. Ex. 169; 20 W. R. 976); the same (*Thompson v. Ross*, 5 H. & N. 16; 29 L. J. Ex. 1; 1 L. T. 43; 5 Jur. (N.S.) 1133); merely intending to return to her father after leaving another's service, not enough to ground action (*Blaymire v. Haley*, 6 M. & W. 55; 4 Jur. 107); trifling acts of service, without any contract, sufficient to ground action (*Bennett v. Alcott*, 2 T. R. 118); making the tea sufficient service (*Carr v. Clarke*, 2 Chitt. 261); though engaged out most of the day, if at her father's thereafter, a sufficient service (*Rist v. Faux*, 4 B. & S. 409; 32 L. J. Q. B. 386; 8 L. T. 737; 11 W. R. 918; 10 Jur. (N.S.) 202); some service, however small, must be shown (*Grinell v. Wells*, 7 M. & Gr. 1033; 8 Sc. N. R. 741; 14 L. J. C. P. 19; 8 Jur. 1101); mere living with father, without acts of service, sufficient, and equally applicable to higher ranks of life (*Maunder v. Venn*, M. & M. 323); seduction must take place during her service to the master who sues (*Davies v. Williams*, 10 Q. B. 728; 16 L. J. Q. B. 369; 11 Jur. 750); if seduction during service with father, and she returns nine months after, when child born, to father's house, sufficient service (*Long v. Keightley*, 11 Ir. R. C. L. 221); if seducer not father of child, no action lies (*Eager v. Grimwood*, 1 Ex. 61; 16 L. J. Ex. 236); enticing from service in order to seduce, though no child born, sufficient cause of action (*Evans v. Walton*, L. R. 2 C. P. 615; 36 L. J. C. P. 307; 17 L. T. 92; 15 W. R. 1062); how far loss of service must be immediate consequence of seduction, receipt in satisfaction (*Boyle v. Brandon*, 13 M. & W. 738); loss of character considered as an element of damage (*Irwin v. Dearman*, 11 East, 23); condition of life and anxiety of mind taken into account in damages (*Andrews v. Askey*, 8 C. & P. 9); if courtship preceded, seduction may be asked about generally, but not bound to answer (*Dodd v. Norris*,

3 Camp. 520); evidence of unchastity only admissible in mitigation of damages (*Verry v. Watkins*, 7 C. & P. 308); no proof of promise of marriage admissible in such action of seduction (*Tulledge v. Wade*, 3 Wils. 18); as to evidence of loose character (*Carpenter v. Wall*, 11 A. & E. 803; 3 P. & D. 457; 4 Jur. 964); defendant not usually entitled to particulars of date of seduction (*Thompson v. Berkeley*, 47 L. T. 700; 31 W. R. 230; *Hodsall v. Taylor*, L. R. 9 Q. B. 79; 43 L. J. Q. B. 14; 29 L. T. 53; 22 W. R. 89).

**Master's Duties as to Paying Wages.**—Reasonable wages implied during service on trial, if master dismisses (*Phillips v. Jones*, 1 A. & E. 332); some wages presumed to be payable for services performed, as conveyancing work (*Poucher v. Norman*, 3 B. & C. 744); turning contract of service into void apprenticeship, original contract remains (*R. v. Shinfield*, 14 East, 547); if contract of service for a term determined, whether promise to pay arises from continuing in service, but none for part of new term (*Lamburn v. Cruden*, 2 M. & Gr. 253; 2 Sc. N. R. 533); if contract for uncertain term, wages *quantum meruit* allowed (*Bailey v. Rimmell*, 1 M. & W. 506; 2 Gale, 60); whether implied promise to pay is a question of fact, action by surveyor (*Higgins v. Hopkins*, 3 Ex. 166; 18 L. J. Ex. 113; *Rennie v. Clark*, 5 Ex. 292; 19 L. J. Ex. 278); if order given for the work, promise to pay usually inferred, monthly payments for manager of steamer (*Taylor v. Laird*, 1 H. & N. 266; 25 L. J. Ex. 329); on action for wages by female servant, defendant may set up agreement for cohabitation as defence (*Bradshaw v. Hayward*, Car. & M. 591); one relative serving another, helping to manage business for board and lodging, question for jury (*Davies v. Davies*, 9 C. & P. 87); taking care of and showing house, and a present to be paid, held wages were implied (*Jewry v. Busk*, 5 Taunt. 302); bastard child serving father, whether wages to be inferred, question for jury (*R. v. Sow*, 1 B. & Ald. 178); poor person taken out of charity, and going errands, no contract implied (*R. v. Weyhill*, 1 W. Bl. 206).

**Vague Contracts as to Remuneration for Services.**—Broker procuring a charter, whether usual commission implied (*Brown v. Nairne*, 9 C. & P. 264); attorney's services at an election, question for jury whether services were gratuitous (*Hingeston v. Kelly*, 18 L. J. Ex. 360); remuneration for services, question for jury whether services were gratuitous (*Hingeston v. Kelly*, 18 L. J. Ex. 360); remuneration for services, question for jury whether services were gratuitous (*Hingeston v. Kelly*, 18 L. J. Ex. 360).

neration to be taken into consideration for any services rendered, held no action will lie (*Taylor v. Brewer*, 1 M. & S. 290); son as father's partner, a jury to say what share of profits (*Peacock v. P.*, 2 Camp. 65); to pay such sum as I deem right, held no contract (*Roberts v. Smith*, 4 H. & N. 315; 28 L. J. Ex. 164; 32 L. T. 320); leaving amount of payment to employer, held reasonable payment is to be presumed (*Bryant v. Flight*, 5 M. & W. 114); if nothing said as to time of payment, a course of dealing will define it (*Hunter v. Belcher*, 10 L. T. 548); secretary of company serving, and to be paid, if company registered, held conditional contract (*Roberts v. Smith*, 28 L. J. Ex. 164; 32 L. T. 320); some kind of bargain to be shown for wages (*Reeve v. Reeve*, 1 F. & F. 280; *Foord v. Morley*, 1 F. & F. 496); if discretionary to pay for services in forming a local board, no *mandamus* will lie (*Ex parte Metcalfe*, 6 E. & B. 287); present for past and future services, held no contract (*Hulse v. Hulse*, 17 C. B. 711; 25 L. J. C. P. 177); surgeon attending patient, relying on a legacy, held entitled to sue, and a jury to decide (*Baxter v. Gray*, 3 M. & Gr. 771; 4 Sc. N. R. 374); master seeking to deduct doctor's bill for attending servant (*Sellon v. Norman*, 4 C. & P. 80); no deduction for time of absence when sick (*Cuckson v. Stones*, 1 E. & B. 248; 28 L. J. Q. B. 25; 7 W. R. 134; 5 Jur. (N.S.) 337); at wages for sum per year and suit of clothes, as to servant's claim to retain clothes (*Crocker v. Molyneux*, 3 C. & P. 470); housekeeper serving master for a legacy of an estate, held part performance is no answer to Statute of Frauds, which requires writing (*Alderson v. Maddison*, 8 App. C. 467; 52 L. J. Q. B. 737; 49 L. T. 303; 31 W. R. 820; 47 J. P. 821); residing as companion for a legacy, treated as some evidence of engagement for a salary (*Dallinger v. St. Aubyn*, 41 L. T. (N.S.) 406); work done under special contract of service, how far new contract of remuneration implied by law (*Munro v. Butt*, 8 E. & B. 738; 4 Jur. (N.S.) 1231); agreement to pay for services on a third party certifying, held certificate a condition precedent; tramway conductor's deposit with employer (*London v. Bailey*, 3 Q. B. D. 217; 47 L. J. M. C. 3; 37 L. T. 499; 26 W. R. 494); certificate of architect of work done on buildings held condition precedent (*Morgan v. Birnie*, 9 Bing. 672; 3 M. & Sc. 76); action for architect's drawings (*Moffatt v. Dickson*, 13 C. B. 543); usage to pay quarterly, some evidence of this being part of contract (*Ridgway v. Hunger-*

*ford*, 3 A. & E. 171); presumption as to payment of wages, if servant has left, and made no claim for a long time (*Sellen v. Norman*, 4 C. & P. 81 a); promissory notes bequeathed to servant, but held no action maintainable (*Gough v. Findon*, 7 Ex. 50); advances made to servant for dresses not allowed as defence to claim of wages (*Hedgeley v. Holt*, 4 C. & P. 104); steward leaving arrears of wages twenty years in master's hands by arrangement, held not estopped from recovering whole amount (*Re Hawkins*, 28 W. R. 240); if no express trust, whether six years' surplus against mortgagee recoverable (*Barmer v. Berridge*, 18 Ch. D. 254; 50 L. J. Ch. 630; 44 L. T. 680; 29 W. R. 844); servant's action for arrears, held interest on each year's balance not allowed (*Rishton v. Grissell*, 10 Eq. 393; 18 W. R. 821).

**Truck Act and Paying Wages in Coin** (1 & 2 Will. 4, c. 36.)—Persons contracting for other's work not artificers, such as butty colliers (*Steele v. Barrett*, 2 H. & C. 934; 28 J. P. 232; 33 L. J. Ex. 153; 12 W. R. 411; 10 Jur. (N.S.) 476); if contract not for labour but for results of labour, not within Act, as railway contract (*Riley v. Warden*, 2 Ex. 59; 18 L. J. Ex. 120); a framework-knitter working gloves on the employer's frames at a price per dozen, deducting rent of frame, whether a payment of wages (*Archer v. James*, 2 B. & S. 61; 31 L. J. Q. B. 153; 6 L. T. 167; 10 W. R. 489); contract to load at price per ton not within Act, though assisting the men he employed (*Sharman v. Sanders*, 13 C. B. 166; 22 L. J. C. P. 86; 3 C. & K. 6; 17 Jur. 765); the hiring must include personal work, as in making bricks (*Ingram v. Barnes*, 7 E. & B. 132; 3 Jur. (N.S.) 156; 26 L. J. Q. B. 319); a tinman at piecework or by day, held an artificer; Act contemplates a sale out-and-out not a hiring of materials (*Pillar v. Llynvi*, L. R. 4 C. P. 752; 38 L. J. C. P. 294; 20 L. T. 923; 17 W. R. 1123); collier bound to give personal service though having also men, held within Act (*Weaver v. Floyd*, 21 L. J. Q. B. 151; 16 Jur. 289); butty colliers personally working and employing others, held within Act (*Bowers v. Lovekin*, 6 E. & B. 584; 25 L. J. Q. B. 371; 2 Jur. (N.S.) 1187); working with six others on iron ship, held artificers (*Lawrence v. Todd*, 14 C. B. (N.S.) 554; 32 L. J. M. C. 238); carrying iron to ship is within the words of Act (*Millard v. Kelly*, 32 L. T. (O.S.) 123; 22 J. P. 736); a framework-knitter an artificer (*Moorhouse v. Lee*, 4 F. & F. 354); removing earth from

railway works is working in clay within sect. 19 (*Riley v. Warden*, 2 Ex. 59; 18 L. J. Ex. 120); getting goods on credit and paid only the balance, held valid (*Law v. Pratt*, 1 L. T. (o.s.) 623); payment of cash, but on condition to spend at shop, held invalid (*Olding v. Smith*, 16 Jur. 497); giving note to a shop to get goods, held an offence, and complete on giving note (*Athersmith v. Drury*, 1 E. & E. 46; 28 L. J. M. C. 5; 5 Jur. (n.s.) 433); an offence, though workman offers to take goods in payment (*Wilson v. Cookson*, 32 L. J. M. C. 177; 13 C. B. (n.s.) 496; 8 L. T. 53; 11 W. R. 426); though taking goods optional, yet accepting balance after deducting purchases, held the offence (*Fisher v. Jones*, 32 L. J. M. C. 177); giving workman the piece of damaged cloth as part wages, held an offence (*Smith v. Walton*, 3 C. P. D. 109; 47 L. J. M. C. 45; 37 L. T. 437; 42 J. P. 280); deduction for frame rent in glove trade, held not rents within sect. 23 (*Chawner v. Cummings*, 8 Q. B. 311; 15 L. J. Q. B. 161; 10 Jur. 454); held deductions for fire-lights, &c., not legal (*Archer v. James*, 2 B. & S. 61; 31 L. J. Q. B. 153; 1 L. T. 26); such deductions in hosiery made legal (37 & 38 Vict. c. 48); fines for absence not valid deduction within sect. 3 (*Willis v. Thorp*, L. R. 10 Q. B. 383; 44 L. J. Q. B. 137; 33 L. T. 11; 23 W. R. 730); deductions for tools, materials, and medical attendance, legal amount of deductions need not be in written contract (*Cutts v. Ward*, L. R. 2 Q. B. 357; 36 L. J. Q. B. 161; 15 L. T. 614; 15 W. R. 445); a sum deducted for doctor appointed by employer held illegal, unless in agreement (*Pillar v. Llynvi*, L. R. 4 C. P. 752; 38 L. J. C. P. 294; 20 L. T. 923; 17 W. R. 1123).

**Restrictions as to Place of Paying Wages.**—Wages not to be paid in public-houses (46 & 47 Vict. c. 31); wages of miners not to be paid in public-houses (35 & 36 Vict. c. 76, s. 16; 35 & 36 Vict. c. 77, s. 9); wages of miners in some cases according to weight of mineral (35 & 36 Vict. c. 76, ss. 17–19; 41 & 42 Vict. c. 49, ss. 65, 86); wages in hosiery to be paid without stoppages (37 & 38 Vict. c. 48); wages of factory workers as to set-off (38 & 39 Vict. c. 90, s. 11); wages in some cases preferred on bankruptcy of employer (46 & 47 Vict. c. 52, s. 40); wages due to servant not attachable (33 & 34 Vict. c. 30; Order xxiv. rr. 3, 4); salary not yet payable not attachable (*Hall v. Pritchett*, 3 Q. B. D. 215; 47 L. J. Q. B. 15; 26 W. R. 95; 37 L. T. 671); a



mere voluntary allowance not attachable (*Ex parte Wicks*, 17 Ch. D. 70); secretary of company's salary of 200*l.* a year held not wages (*Gordon v. Jennings*, 9 Q. B. D. 45; 46 L. T. 534; 51 L. J. Q. B. 417; 30 W. R. 704; 46 J. P. 519); order to attach not prohibited to judge of High Court (*Booth v. Trail*, 12 Q. B. D. 9).

**Obligation to Indemnify Servant.**—Master bound to indemnify servant against consequences of lawful acts, but not unlawful acts, as a libel (*Colburn v. Patmore*, 1 C. M. R. 73; 4 Tyr. 677); if servant *bonâ fide* do what is apparently a lawful act master bound to indemnify him, as selling his cattle by auction (*Adamson v. Jarvis*, 4 Bing. 66; 12 Moore, 241); same as to sheriff seizing under *fi. fa.* creditor entitled to indemnity (*Humphreys v. Pratt*, 2 D. & Cl. 288; *Power v. Hoey*, 19 W. R. 917).

**Contract of Service Entire or Severable.**—Contract to make perfect a chandelier for 10*l.* not severable, and price of part of work not recoverable (*Sinclair v. Bowles*, 9 B. & C. 92; 4 M. & Ry. 1); hired as seamen, Liverpool to Jamaica and back, held not severable (*Cutter v. Powell*, 6 T. R. 320); entire wages as amount of damages (*Prickett v. Badger*, 1 C. B. (N.S.) 305; 26 L. J. C. P. 33; 3 Jur. (N.S.) 66); domestic servant, hired for a year and a suit of clothes, if not serving the whole year cannot recover the clothes (*Crocker v. Molyneux*, 3 C. & P. 470); shipwright hired to repair ship, no total sum agreed on, held entitled to sue for part of work done (*Roberts v. Havelock*, 3 B. & Ad. 404); if work unskilfully done, proof allowed in defence to reduce wages *pro tanto* (*Basten v. Butter*, 7 East, 479; *Farnsworth v. Gerrard*, 1 Camp. 38); if some benefit from work, how far reduced price got rid of (*Pardoe v. Webb*, Car. & M. 531); surveyor whose mistake as to soil caused a bridge to be insufficient, held entitled to nothing (*Money Penny v. Hartland*, 1 C. & P. 352); solicitor, whose negligence lost the cause, held not entitled to anything (*Bracey v. Carter*, 12 A. & E. 373); if servant agreed to pay for goods lost, held price may be deducted from wages (*Le Loir v. Bristow*, 4 Camp. 134); if a work of skill, and it is without benefit to employer, not entitled to recover (*Duncan v. Blundell*, 3 Stark. 6); if special contract for work, servant can only recover for real value of work (*Chapel v. Hickes*, 2 Car. & M. 214; 4 Tyr. 43); contract to carry goods by barge, and amount to be allowed for

pilferage of the goods, held, if proved, a good contract and defence (*Cleworth v. Pickford*, 7 M. & W. 314); part of the work only done, the employer completing the rest, held a good deduction (*Turner v. Diaper*, 2 M. & Gr. 241; 2 Sc. N. R. 447); to do work and find materials for fixed sum, and employer furnished some materials, held a good defence *pro tanto* (*Newton v. Forster*, 12 M. & W. 772); master sued for wages may set off by counter-claim, subject to court's discretion (Order xix. r. 3); servant suing in county court or at petty sessions, master may set off for damaged materials under 38 & 39 Vict. c. 90, s. 3 (*Hindley v. Haslam*, 3 Q. B. D. 481; 27 W. R. 61).

**Master bound to Maintain some Servants.**—Master bound to supply domestic servants living in his house with food (14 & 15 Vict. c. 11; 24 & 25 Vict. c. 100, ss. 26, 73, 77); not bound to supply medical aid to servant (*Newby v. Wiltshire*, 4 Doug. 284; 3 B. & P. 247); same if servant meet with accident (*Atkins v. Banwell*, 2 East, 505); same as to broken arm while driving his master (*Wennell v. Adney*, 3 B. & P. 247); master's implied agreement to pay doctor inferred from knowledge and acquiescence (*Cooper v. Phillips*, 4 C. & P. 581; *Sellen v. Norman*, 4 C. & P. 80); if servant of tender years, and dependent, master indictable for not providing food (*R. v. Friend*, R. & Ry. 22; *R. v. Ridley*, 2 Camp. 650); if servant starved and endangering health, master indictable (24 & 25 Vict. c. 100, s. 26); if servant without excuse starved, master summarily convicted (38 & 39 Vict. c. 86, s. 6); apprentice at common law entitled to food and medicine (*R. v. Smith*, 8 C. & P. 153); apprentice at common law entitled *primâ facie* to be taught by master, and master's retirement from business no answer (*Couchman v. Sillar*, 22 L. T. 480; 18 W. R. 757); if master give up one of two trades, held a breach of indenture to teach (*Ellen v. Topp*, 6 Ex. 424; 20 L. J. Ex. 241; 15 Jur. 451); apothecary giving up business, and only making up his own prescriptions, held no breach (*Batty v. Monks*, 12 L. T. 832; 15 Ir. R. C. L. 338).

**Effects of Servants Absenting themselves.**—If apprentice absent himself this is defence to master; return after enlisting should be offered (*Hughes v. Humphreys*, 6 B. & C. 680; 9 D. & R. 715); condition precedent that apprentice should be willing to be taught (*Raymond v. Minton*, L. R. 1



Ex. 244; 4 H. & C. 371; 35 L. J. Ex. 153; 14 L. T. 367; 12 Jur. (N.S.) 435); if proviso to obey all commands, then wilful disobedience justifies discharge (*Westwick v. Theodor*, L. R. 10 Q. B. 224; 44 L. J. Q. B. 110; 32 L. T. 696; 23 W. R. 620); apprentice permanently disabled, a defence to master (*Boast v. Firth*, L. R. 4 C. P. 1; 38 L. J. C. P. 1; 19 L. T. 264; 17 W. R. 29); if master remove business two hundred miles, an out-door apprentice entitled to sue for breach (*Eaton v. Western*, 9 Q. B. D. 636; 52 L. J. Q. B. 41; 47 L. T. 593; 31 W. R. 313; 47 J. P. 196; *Royce v. Charlton*, 8 Q. B. D. 1; 45 L. T. 712; 30 W. R. 274; 46 J. P. 197); if apprentice bound to work on Sundays (*Phillips v. Innes*, 4 Cl. & F. 234); master's damages for breach to apprentice payable only up to apprentice quitting (*Lewis v. Peachey*, 1 H. & C. 518; 31 L. J. Ex. 496; 10 W. R. 797); usually no power to discharge apprentice for misconduct unless a proviso (*Phillips v. Clift*, 4 H. & N. 168; 28 L. J. Ex. 153; 5 Jur. (N.S.) 74); mere misconduct usually no ground for discharging apprentice (*Winstone v. Linn*, 1 B. & C. 460); washing as part of apprentice's necessities is included (*Abbot v. Bates*, 45 L. J. C. P. 117; 33 L. T. 491; 24 W. R. 101); discharging apprentice, solicitor, for combining to take away clients (*Mercer v. Whale*, 5 Q. B. 447; 14 L. J. Q. B. 267; 9 Jur. 576); on master's death during apprenticeship only a proportion of premium is recoverable by apprentice (*Whincup v. Hughes*, L. R. 6 C. P. 78; 40 L. J. C. P. 104; 24 L. T. 76; 19 W. R. 439); articles not cancelled merely for master refusing to instruct (*Webb v. England*, 29 Beav. 44; 30 L. J. Ch. 224; 3 L. T. 574; 9 W. R. 183; 7 Jur. (N.S.) 153); proviso to return premium if certificate of ill-health produced, enforced (*Derby v. Humber*, L. R. 2 C. P. 247; 15 L. T. 538); trustee advancing sum for apprenticing an infant to be allowed it in accounting (*Worthington v. McCraw*, 23 Beav. 81; 36 L. J. Ch. 286; 38 & 39 Vict. c. 90, s. 6); articulated clerk to solicitor not within the Master and Servant Acts (*Ex parte Prideaux*, 3 My. & C. 327; 7 L. J. Ch. 202; 2 Jur. 366).

**Master's Duty in giving Character of Servant.**—Servant cannot sue master for refusing to give a character (*Handley v. Moffatt*, 21 W. R. 231; 7 Ir. R. C. L. 104; *Carrol v. Bird*, 3 Esp. 201); whether volunteering information subjects one to action, if honestly made (*Coxhead v. Richards*, 2 C. B. 569; 15 L. J. C. P. 278; 10 Jur. 984);

if character is given honestly no action lies for the consequences (*Toogood v. Spyring*, 1 C. M. R. 193; 4 Tyr. 582); doctrine is founded on mutual interest in knowing the truth, and subsequent discoveries, if communicated, are privileged (*Gardner v. Slade*, 13 Q. B. 796; 18 L. J. Q. B. 334; 13 Jur. 826); burden of proving truth of master's statements is not on him (*Rogers v. Clifton*, 3 B. & P. 587); if letter produced it may show some evidence of malice (*Fountain v. Boodle*, 3 Q. B. 5; 2 G. & D. 455); receiver of master's letter may be bound to produce it, though master protected (*Webb v. East*, 5 Ex. D. 108; 49 L. J. Ex. 250; 41 L. T. 715; 28 W. R. 336; 44 J. P. 300); director of two companies, and clerk to both being dismissed by one company, director, informing other company, protected (*Harris v. Thompson*, 13 C. B. 333); malice of master may be inferred from facts (*Bromage v. Prosser*, 4 B. & C. 255; 6 D. & R. 296; 1 C. & P. 475); if facts consistent only with desire to injure servant, question for jury (*Somerville v. Hawkins*, 10 C. B. 583; 20 L. J. C. P. 131; 15 Jur. 450); if master's account false to his knowledge, or officiously and recklessly given (*Fountain v. Boodle*, 3 Q. B. 5; 2 G. & D. 455); master volunteering to inform new master of servant's misconduct, a question for jury (*Rogers v. Clifton*, 3 B. & P. 587); master volunteering to write, then asked to write again, held *prima facie* malicious (*Pattison v. Jones*, 8 B. & C. 578; 3 M. & Ry. 101); needlessly giving unfavourable character in presence of third parties, question for jury (*Taylor v. Hawkins*, 16 Q. B. 308; 20 L. J. Q. B. 313; 15 Jur. 746); master separately informing each servant not evidence of malice (*Manby v. Witt*, 18 C. B. 544; 25 L. J. C. P. 294; 2 Jur. (N.S.) 1004); needlessly sending telegram seen by clerks, some evidence of malice (*Williamson v. Frere*, 43 L. J. C. P. 161; L. R. 9 C. P. 393; 30 L. T. 332; 22 W. R. 878); malice inferred, if no duty or legal relation (*Toogood v. Spyring*, 1 C. M. R. 181; 3 L. J. Ex. 347); master warning other servants in presence of the dismissed servant (*Somerville v. Hawkins*, 10 C. B. 583; 20 L. J. C. P. 131; 15 Jur. 450); master may prove a justification though not fully knowing all the facts at time (*Weatherston v. Hawkins*, 1 T. R. 110); master stating mere hearsay as to conduct of servant after leaving, a question for jury (*Child v. Affleck*, 9 B. & C. 403; 4 M. & Ry. 338); master may correct former reply on further information (*Gardner v. Slade*, 13 Q. B. 796; 18 L. J. Q. B. 334); insurance com-

pany informing customer of captain's drunken habits privileged (*Hamon v. Falle*, 4 App. C. 247); kind of interest in the character given of a servant sufficient to protect privilege (*Coxhead v. Richards*, 2 C. B. 569; 15 L. J. C. P. 278; 10 Jur. 984); jury may say if letter on face of it shows express malice (*Gilpin v. Fowler*, 9 Ex. 615; 23 L. J. Ex. 152; 18 Jur. 292); if expressions in letter exceeding the privilege, then not privileged (*Fryer v. Kimmersley*, 15 C. B. (n.s.) 122; 33 L. J. C. P. 96; 9 L. T. 415; 12 W. R. 155; 10 Jur. (n.s.) 441); mere intemperance of language, when malice is negatived, does not take away privilege (*Cowles v. Potts*, 34 L. J. Q. B. 248; 11 Jur. (n.s.) 946; 13 W. R. 858); solicitor writing to client privileged as an interest (*Harrison v. Bush*, 5 E. & B. 341; 25 L. J. Q. B. 25; 1 Jur. (n.s.) 846); if wilfully false character master liable, how far judge will amend pleading (*Wilkins v. Reid*, 15 C. B. 192; 22 L. J. C. P. 193; 18 Jur. 1081); if false and injured, the servant has sufficient ground of action (*Foster v. Charles*, 6 Bing. 396; 7 Bing. 105; 4 M. & P. 741); servant concealing her marriage held immaterial (*Fletcher v. Krell*, 42 L. J. Q. B. 55; 28 L. T. 105); servant forging character indictable (32 Geo. 3, c. 56); offence of uttering, though not forging, treated as common law offence (*R. v. Sharman*, Dears. 285; 6 Cox, 212; 23 L. J. M. C. 51; 18 Jur. 157); giving false character of servants (32 Geo. 3, c. 56); as a criminal offence (34 & 35 Vict. c. 116; 47 & 48 Vict. c. 43); master may sue former master for false character (*Wilkin v. Read*, 15 C. B. 192; 22 L. J. C. P. 193; 18 Jur. 1081); knowingly uttering forged character with intent to deceive, held forgery at common law (*R. v. Sharman*, Dears. 285; 23 L. J. M. C. 51; 6 Cox, 212; 18 Jur. 157; *R. v. Noah*, 27 L. J. M. C. 204; 1 D. & B. 550; 4 Jur. (n.s.) 464).

### Breach of Contract of Hiring Servant, and Damages.—

In domestic service a month's wages is measure of damages for discharge without notice (*Hartley v. Harman*, 11 A. & E. 798; 3 P. & D. 567); in other cases damages regulated by amount of wages or salary, and probability of getting another situation within a certain time (*Hartland v. General*, 14 L. T. 863); clerk hired for a year and dismissed without notice, a year's wages recoverable (*Davis v. Marshall*, 4 L. T. 216; 9 W. R. 520); if servant become bankrupt, right of action passes to assignees (*Beckham v. Drake*, 2 H. L. C. 606; 13 Jur. 921); engaged for three years, dismissed in

three months, held one year's salary rightly awarded by jury (*Smith v. Thomson*, 8 C. B. 44; 18 L. J. C. P. 314); second action to recover damages for a broken quarter not competent (*Goodman v. Pocock*, 15 Q. B. 576; 19 L. J. Q. B. 410; 14 Jur. 1042); mariners losing clothes when illegally imprisoned, held no part of the damages (*Burton v. Pinkerton*, L. R. 2 Ex. 340; 36 L. J. Ex. 137; 17 L. T. 15); expense of return from abroad no part of damages for breach, if not provided in contract (*French v. Brookes*, 6 Bing. 354; 4 M. & P. 11); servant's claim against company wound up, for determining contract before the term (*Shireff's Case*, 14 Eq. 417; 42 L. J. Ch. 5; 20 W. R. 966); engaged for five years for commission and salary, loss of commission not provable as debt (*Ex parte Machure*, 5 Ch. 737; 39 L. J. Ch. 685; 23 L. T. 685); agent entitled to compensation for prospective commission (*Dean's Case*, 41 L. J. Ch. 476; 26 L. T. 467); chance of getting another engagement an element to consider (*Sowden v. Mills*, 30 L. J. Q. B. 176; 3 L. T. 754); servant immediately on dismissal may sue for breach without waiting till end of term (*Hochster v. De la Tour*, 2 E. & B. 678; 22 L. J. Q. B. 455; 17 Jur. 972); the same in other executory contracts (*Danube v. Xenos*, 13 C. B. (N.S.) 825; 31 L. J. C. P. 284; 8 Jur. (N.S.) 439; 10 W. R. 320); the month's wages, in lieu of dismissal, claimed specially (*Fewings v. Tisdal*, 1 Ex. 295; 17 L. J. Ex. 18; 11 Jur. 977; 5 D. & L. 196); suing for damages for breach, then re-engaged and dismissed, held no second action competent on the same agreement (*Barnsley v. Taylor*, 37 L. J. Q. B. 39; 32 J. P. 229).

**Specially Enforcing Service.**—No specific performance of contract to serve ordered, as manager of business (*Stocker v. Brockelbank*, 3 Mac. & G. 250; 20 L. J. Ch. 401); same as to contractor working railway line (*Johnson v. Shrewsbury*, 3 De G. M. & G. 914; 22 L. J. Ch. 921); same as to agent to collect parcels (*Chaplain v. L. N. W.*, 5 L. T. 601); same as to manager of a wharf (*Ogden v. Fossick*, 4 De G. F. & J. 421; 32 L. J. Ch. 73); to carry by railway particular traffic is enforceable (*Wolverhampton v. L. N. W.*, 16 Eq. 433; 43 L. J. Ch. 133); as agent to a company not enforceable (*Mair v. Himalaya*, 1 Eq. 411); same as to broker to shipping company (*Brett v. East India*, 2 H. & M. 404); though personal service mixed up with other contracts, no specific performance given (*White v.*



*Boby*, 37 L. T. 652; 26 W. R. 133; *Rigby v. Connol*, 14 Ch. D. 487); month on trial, held idleness and misconduct a defence against specific performance (*Brown v. Banks*, 3 Giff. 190); servant may, however, by injunction, be prohibited serving, as opera singer (*Lumley v. Wagner*, 1 De G. M. & G. 604; 21 L. J. Ch. 898; 16 Jur. 871); trustees may be enjoined from dismissing schoolmaster (*Willis v. Childe*, 13 Beav. 117); trustees enjoined from interfering with minister of chapel (*Dangars v. Rivaz*, 29 L. Ch. 685); actors may be restrained from playing at particular theatre (*Webster v. Dillon*, 3 Jur. (N.S.) 432; 5 W. R. 867); if employer has delayed his contract, will not be enforced by injunction (*Fechter v. Montgomery*, 33 Beav. 22); exclusive service to one master may be inferred from nature of contract, and court decides if damages sufficient (*Doherty v. Allman*, 3 App. C. 730; 39 L. T. 129; 26 W. R. 513); apprentice may be ordered by justices to continue service (38 & 39 Vict. c. 90); seamen may in some cases be conveyed on board by force, subject to appeal to a court (43 & 44 Vict. c. 16, s. 10).

**Taxes Connected with Servants.**—Tax for male servant (32 & 33 Vict. c. 14, s. 18; 39 Vict. c. 16, s. 5); temporary waiters hired at hotel, held to be subject to duty (*Spencer v. Scheerman*, 25 L. T. 873); man regularly employed as groom and yardman not exempt from tax (*Yelland v. Vincent*, 47 J. P. 230); servants under Inhabited House Duties Act (32 & 33 Vict. c. 14; 44 Vict. c. 12); clerk at 150*l.* a year, held not a servant or other person within 32 & 33 Vict. c. 14, s. 11 (*Yewens v. Noakes*, 6 Q. B. D. 530; 50 L. J. Q. B. 132; 44 L. T. 128; 28 W. R. 562; 45 J. P. 468); bank clerk treated as caretaker only (*City Bank v. Last*, 47 L. T. 254); bank clerk at 100*l.* a year not a servant or other person (*Wootten v. Rolfe*, 47 L. T. 252); clothier's cashier at 200*l.* a year treated as servant or other person (*Rolfe v. Hyde*, 6 Q. B. D. 673; 50 L. J. Q. B. 481; 44 L. T. 775; 45 J. P. 632); if female caretaker's adult son live with her, house is not exempt (*Weguelin v. Wayall*, 14 Q. B. D. 838).

**Bequests to Servants.**—Servant does not include steward of manor court (*Townshend v. Windham*, 2 Vern. 546); nor a coachman hired from job-master (*Chilcot v. Bromley*, 12 Ves. 114); includes house steward (*Armstrong v. Claver-*

ing, 27 Beav. 226); three years in service excludes those at weekly wages (*Blackwell v. Pennant*, 9 Hare, 551; 16 Jur. 420; *Booth v. Dean*, 1 My. & K. 560); servants in another house of testator are included (*Thrupp v. Collett*, 26 Beav. 147; 5 Jur. (N.S.) 111); servants in domestic establishment exclude the head gardener living in separate cottage (*Ogle v. Morgan*, 1 De G. M. & G. 359; 16 Jur. 277; 19 L. J. Ch. 531); parol evidence to prove who is in service (*Herbert v. Reed*, 16 Ves. 481; *Re Nunn*, 44 L. J. Ch. 255); dismissed a few days before death is not in service (*Darlow v. Edwards*, 1 H. & C. 547; 32 L. J. Ex. 51; 6 L. T. 905; 10 W. R. 700; 9 Jur. (N.S.) 336); servant included though left service three-and-a-half years (*Parker v. Marchant*, 1 Y. & C. (N.S.) 290; 7 Jur. 457); servant voluntarily leaving service before the death not included (*Venes v. Marriott*, 31 L. J. Ch. 519); order in lunacy operating, as dismissal of servant (*Re Hartley*, 47 L. J. Ch. 610); legacy to servant not presumed to be in satisfaction of wages (*Richardson v. Greese*, 3 Atk. 69; *Smith v. Smith*, 31 L. J. Ch. 91; *Roch v. Callen*, 6 Hare, 531); testator directing executors to continue A. as servant, held not enforceable (*Lawless v. Shaw*, 5 Cl. & F. 129); direction to act liberally with old servants, held not an imperative trust (*Knight v. Knight*, 3 Beav. 148; *Green v. Marsden*, 1 Drew. 647; *Thorncroft v. Lashmar*, 31 L. J. Prob. 150; 2 Sw. & T. 479; 6 L. T. 476; 10 W. R. 783); devise to A. to pay B. 5*l.* a year wages as long as he continued on farm, held A. took the fee (*Pickwell v. Spencer*, 40 L. J. Ex. 132); devise with condition not to marry a domestic servant, held valid condition (*Jenner v. Turner*, 16 Ch. D. 188; 50 L. J. Ch. 161; 43 L. T. 468; 29 W. R. 99; 45 J. P. 124); promise if A. will serve B. to leave an estate to A., and A. enters and serves, held not enforceable (*Alderson v. Maddison*, 8 App. C. 474; 52 L. J. Q. B. 737; 49 L. T. 303; 31 W. R. 820; 47 J. P. 821).

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## CHAPTER III.

### MASTER'S LIABILITY FOR SERVANTS.

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**Master Liable Criminally for Servant's Acts.**—So held as to selling libellous works (*R. v. Walter*, 3 Esp. 21; *R. v. Gutch*, M. & M. 432); master allowed to prove that servant acted contrary to orders (6 & 7 Vict. c. 96, s. 7; *R. v. Holbrook*, 4 Q. B. D. 42; 48 L. J. Q. B. 11; 39 L. T. 536; 27 W. R. 313); liable for servant putting injurious ingredients in bread, if some knowledge proved (*R. v. Dixon*, 3 M. & S. 11; 4 Camp. 12; *Core v. James*, L. R. 7 Q. B. 135; 41 L. J. M. C. 19; 25 L. T. 593; 20 W. R. 201); not weighing bread delivered from cart (*Robinson v. Cliff*, 1 Ex. D. 294; 45 L. J. M. C. 109; 34 L. T. 689); if loaf previously sold and weighed no necessity to weigh again (*Ridgway v. Ward*, 14 Q. B. D. 110; 54 L. J. M. C. 20; 51 L. T. 704; 49 J. P. 150; 33 W. R. 166); liable under certain statutes impliedly, as under the Licensing Act, for suffering gaming on licensed premises by shutting his eyes to what goes on (*Bosley v. Davies*, 1 Q. B. D. 89; 45 L. J. M. C. 27; 33 L. T. 528; 24 W. R. 140; 40 J. P. 550; *Redgate v. Haynes*, 1 Q. B. D. 89; 45 L. J. M. C. 65; 33 L. T. 779; 41 J. P. 86); it is for justices to say if master free from blame in what servant did (*Somerset v. Hart*, 12 Q. B. D. 360; 53 L. J. M. C. 77; 48 J. P. 32); for servant serving liquor to constable on duty (*Mullins v. Collins*, L. R. 9 Q. B.



292; 43 L. J. M. C. 67; 29 L. T. 838; 38 J. P. 84; 22 W. R. 297); for using premises as a brothel, once only is some evidence (*R. v. Holland*, 46 J. P. 312); for supplying drink to drunken man, master takes risk of the man being drunk (*Cundy v. Le Cocq*, 13 Q. B. D. 207; 53 L. J. M. C. 125; 51 L. T. 265; 32 W. R. 769; 48 J. P. 599); for selling liquors in prohibited hours (*Copley v. Burton*, L. R. 5 C. P. 489; 39 L. J. M. C. 141); for sending diseased animal without license contrary to Contagious Diseases (Animals) Act (*Nichols v. Hall*, L. R. 8 C. P. 322; 42 L. J. M. C. 105; 28 L. T. 473; 21 W. R. 579); for offences under Mines Acts, *mens rea* essential (*Dickenson v. Fletcher*, L. R. 9 C. P. 1; 43 L. J. M. C. 25; 29 L. T. 540); a non-resident mine owner taking no part in management not liable (*Baker v. Carter*, 3 Ex. D. 132; 47 L. J. M. C. 87; 26 W. R. 497); charter-master cognizant of breach of rule, held liable (*Howells v. Wynne*, 15 C. B. (n.s.) 3; 32 L. J. M. C. 241; 9 Jur. (n.s.) 1041); for sending dangerous goods by railway guilty knowledge to be proved (*Hearne v. Garton*, 2 E. & E. 66; 28 L. J. M. C. 216; 5 Jur. (n.s.) 648); receiving lunatics, but honestly believing them not lunatic, held guilty (*R. v. Bishop*, 5 Q. B. D. 259; 49 L. J. M. C. 45; 42 L. T. 240; 28 W. R. 475; 44 J. P. 330; 14 Cox, 404); for placing threshing machine contrary to Highway Act, master not liable (*Harrison v. Leaper*, 5 L. T. 640; 26 J. P. 373); for harbouring tobacco in a cellar, master liable (*A. G. v. Siddon*, 1 Cr. & J. 220; 1 Tyr. 41); for throwing out quarry rubbish into navigable river, master liable though having no knowledge (*R. v. Stephen*, L. R. 1 Q. B. 702; 35 L. J. M. C. 251; 14 L. T. 593; 7 B. & S. 710; 14 W. R. 859); for throwing out ballast into navigable river master of vessel liable (*Michell v. Brown*, 1 E. & E. 267; 28 L. J. M. C. 53; 5 Jur. (n.s.) 707); railway company indictable for obstructing highway (*R. v. Great North*, 9 Q. B. 315; *R. v. Pease*, 4 B. & Ad. 30); for not disinfecting premises, master not liable for foreman (*Searle v. Reynolds*, 7 B. & S. 704; 14 L. T. 518); for turning gas-refuse into stream, owners liable for superintendent (*R. v. Medley*, 6 C. & P. 292); for laying rubbish on highway near neighbour's wall, master liable (*Gregory v. Piper*, 9 B. & C. 591; 4 M. & Ry. 500).

**Innkeepers and Carriers Liability for Servants.**—Innkeepers liable for larcenies by their servants of guests' goods (*Kent v. Shuckard*, 2 B. & Ad. 803); unless the guest con-

tributed by negligence to the loss (*Oppenheim v. White Lion*, L. R. 6 C. P. 515; 40 L. J. C. P. 93; 25 L. T. 93); common carriers liable to customers for thefts by their servants of customers' goods (1 Will. 4, c. 68, s. 8); if more than mere suspicion proved (*G. N. R. v. Rimell*, 18 C. B. 575; 27 L. J. C. P. 201); mere fact of railway carriers' servants having greater facilities not enough (*Marqueen v. G. W. R.*, L. R. 10 Q. B. 569; 44 L. J. Q. B. 130; 32 L. T. 759; 23 W. R. 698).

**Liability for Servant's Negligence.**—Master liable for every kind of negligence of servants in course of their duties; groom's careless use of the spur (*North v. Smith*, 10 C. B. (n.s.) 572; 4 L. T. 407); while delivering coal, and not protecting coal-plate in pavement, coal merchant liable (*Whiteley v. Pepper*, 2 Q. B. D. 276; 46 L. J. Q. B. 436; 36 L. T. 588; 25 W. R. 607); leaving horse unattended in street, and passer-by striking it, owner liable (*Illidge v. Goodwin*, 5 C. & P. 190); servant taking and using another's horse on his master's business, the master held liable (*Goodman v. Kennell*, 3 C. & P. 167; 1 M. & P. 241); master sitting beside servant driving held liable for driver's negligence (*Chandler v. Broughton*, 1 Cr. & M. 29; 3 Tyr. 220); railway superintendent refusing to deliver up goods, held company liable, because bound to have some one to manage for them (*Giles v. Taff*, 2 E. & B. 822; 23 L. J. Q. B. 43; 18 Jur. 510); manager for master having gig of his own, and partly acting on his business, master held liable (*Patten v. Rea*, 2 C. B. (n.s.) 606; 26 L. J. C. P. 235; 3 Jur. (n.s.) 892); omnibus guard forcing out a passenger believed drunk, master liable (*Seymour v. Greenwood*, 7 H. & N. 355; 30 L. J. Ex. 327; 9 W. R. 785; 4 L. T. 833; 8 Jur. (n.s.) 24); lighterman negligently obstructing navigation, master liable (*Page v. Defries*, 7 B. & S. 137); railway gatekeeper negligent, company liable (*Lunt v. L. N. W.*, L. R. 1 Q. B. 277; 35 L. J. Q. B. 105; 14 L. T. 225; 14 W. R. 497; 12 Jur. (n.s.) 409); carter leaving horse unattended, the master-contractor liable if fairly within scope of authority (*Whatman v. Pearson*, L. R. 3 C. P. 422); railway porter pulling violently a passenger out of carriage under mistake, company liable though authority abused (*Bayley v. Manchester*, L. R. 8 C. P. 148; 42 L. J. C. P. 78; 28 L. T. 366); stevedore's foreman negligently loading ship, stevedore held liable (*Burns v. Polson*, L. R. 8 C. P. 563; 42 L. J. C. P.

302; 29 L. T. 329; 22 W. R. 20); railway porter at joint station injuring passenger by other railway, his own company held liable (*Tebbutt v. Bristol*, L. R. 6 Q. B. 73; 40 L. J. Q. B. 78; 23 L. T. 772; 19 W. R. 383); cab-owner liable for driver's negligence, though driver only bailee of cab (*Venables v. Smith*, 2 Q. B. D. 279; 46 L. J. Q. B. 470; 36 L. T. 509; 25 W. R. 384); owner of ship not liable for pilot's negligence if employment of pilot compulsory (*Martin v. Temperley*, 4 Q. B. 298; 12 L. J. Q. B. 129; 3 G. & D. 497; 7 Jur. 150); or if pilot bound to serve on request (*Lucey v. Ingram* 6 M. & W. 302); and if pilot alone caused the injury, or if joint fault (*Hammond v. Rogers*, 7 Moore P. C. 160); bound to take pilot if proceeding to sea, what is proceeding to sea (*Rodrigues v. Melhuish*, 10 Ex. 110; 24 L. J. Ex. 26); ship at anchor, duty of pilot in such case (*Wood v. Smith*, L. R. 5 Pr. C. 451; 43 L. J. Adm. 11; 30 L. T. 439; 22 W. R. 578); if pilot not compulsory, owner of ship liable for the negligence of pilot (*Earl of Auckland*, 30 L. J. Prob. 124; Lush. 164 *Woburn Abbey*, 38 L. J. Adm. 38; 20 L. T. 621).

**Torts committed by Servant in course of Service for Benefit of Master.**—Superintendent of railway imprisoning passenger (*Goff v. G. N. R.*, 3 E. & E. 672; 30 L. J. Q. B. 148; 3 L. T. 850; 7 Jur. (n.s.) 286); ticket clerk charging passenger with stealing ticket (*Vandeneynde v. Ulster*, 5 Ir. C. L. 328); station master giving into custody passenger for not having ticket, company not liable (*Poulton v. L. S. W.*, L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; 17 L. T. 11; 8 B. & S. 616); omnibus driver striking rival driver for master's benefit, master liable (*Ward v. Omnibus*, 42 L. J. C. P. 265; 28 L. T. 850; *Croft v. Alison*, 4 B. & Ald. 590); bank agent giving customer in charge, bank not liable (*Bank v. Owston*, 4 App. C. 270; 48 L. J. P. C. 25; 40 L. T. 500); railway inspector imprisoning traveller for fraud, company liable (*Moore v. Metrop. R.*, L. R. 8 Q. B. 36; 42 L. J. Q. B. 23; 27 L. T. 579; 21 W. R. 145); master liable for servant maliciously prosecuting (*Edwards v. Midl. R.*, 6 Q. B. D. 287; 50 L. J. Q. B. 281; 43 L. T. 694; 29 W. R. 609; 45 J. P. 374); if several ways of doing the act, and servant does it by a tort or crime, master not liable (*Peachy v. Rowland*, 13 C. B. 182; 22 L. J. C. P. 81; 20 L. T. (o. s.) 208; 17 Jur. 764); *Coover v. Slade*, 6 H. L. C. 793; 27 L. J. Q. B. 449; 4 Jur. (n.s.) 791); *Gaslight v. Vestry*, 15 Q. B. D. 1); though

immediate cause of injury was act of stranger, as striking a horse, master may be liable (*Illidge v. Goodwin*, 5 C. & P. 190; placing *chevaux de frise* on a private road (*Clarke v. Chambers*, 3 Q. B. D. 327; 47 L. J. Q. B. 427; 38 L. T. 454; 26 W. R. 613); public statutory trustees liable for their servant's negligence (*Mersey v. Gibbs*, L. R. 1 H. L. 93; 35 L. J. Ex. 225; 14 L. T. 677; 14 W. R. 872; 12 Jur. (n.s.) 371); cause of action is where the mischief arises (*Sutton v. Clarke*, 1 Marsh. 429; 6 Taunt. 29).

**Master Ordering or Ratifying Servant's Act.**—If master adopt or ratify servant's act he is liable for consequences, mere ratification of trespass not necessarily causing liability (*Wilson v. Tumman*, 6 Sc. N. R. 904; 12 L. J. C. P. 306; 1 D. & L. 513); *E. C. R. v. Broom*, 6 Ex. 314; 20 L. J. Ex. 196; 15 Jur. 297); arrest by railway servant not shown to be ratified (*Roe v. Birkenhead*, 7 Ex. 36; 21 L. J. Ex. 90); receiving chattel wrongfully seized not necessarily a joint trespassing (*Wilson v. Barker*, 4 B. & Ad. 616); master ratifying servant's contracts liable (*Bird v. Brown*, 4 Ex. 798; 19 L. J. Ex. 154; 14 Jur. 132); if servant purported to act at the time as servant or agent (*Wilson v. Tumman*, 6 M. & Gr. 226; 6 Sc. Nr. 894; 1 D. & L. 513; 12 L. J. C. P. 307); manager of trading company ordering goods, held binding (*Smith v. Hull*, 11 C. B. 897; 21 L. J. C. P. 106; 16 Jur. 595); ratification of act of sheriff by execution creditor (*Woollen v. Wright*, 31 L. J. Ex. 513; 1 H. & C. 554; 7 L. T. 73); and if act at time was capable of being validly done (*Ashbury v. Riche*, L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 451); notice to quit by unauthorised agent (*Doe v. Goldwin*, 2 Q. B. 146; 1 G. & D. 463); the ratification must be *in toto*, and not by adopting some of the conditions only (*Foster v. Smith*, 18 C. B. 156); clerk ordering and company adopting and using goods supplied (*Pauling v. L. N. W.*, 8 Ex. 867; 23 L. J. Ex. 105); agent holding out as real owner, the latter not liable (*Ramozotti v. Bowring*, 29 L. J. C. P. 30; 7 C. B. (n.s.) 851; 6 Jur. (n.s.) 172).

**Government Servants an Exception.**—Government not liable for negligence of public officer, as negligence in bank-note stolen from letter (*Whitfield v. Despencer*, Cowp. 754); officer may be personally liable for acts (*Baron v. Demmon*, 2 Ex. 167); petition of right not competent against suc-

ceeding sovereign (*Canterbury v. A. G.*, 1 Phill. 306; 12 L. J. Ch. 281; 7 Jur. 224); secretary for war not liable for subordinate's breach of contract (*O'Grady v. Cardwell*, 21 W. R. 340).

**Master's Liability for Servant's Fraud.**—Master also liable for the fraud of his servant in course of the duty; bank manager defrauding customer, company held liable (*Barwick v. English*, L. R. 2 Ex. 259; 36 L. J. Ex 147; 16 L. T. 461; 15 W. R. 877); directors' misrepresentations, company liable (*Houldsworth v. Glasgow*, 5 App. C. 317; 42 L. T. 194; 28 W. R. 677); company liable for bank manager's misrepresentations (*Western v. Addie*, 2 Paters. 1475; L. R. 1 Sc. Ap. 154); bank manager defrauding customer, bank liable (*Mackay v. Commercial*, 5 Pr. C. 394; 43 L. J. Pr. C. 31; 30 L. T. 180; 22 W. R. 473).

**Evidence as to Servant's Authority.**—Admission by servant out of course of business not binding; railway inspector as to cattle trucks (*Willis v. G. W. R.*, 18 C. B. (N.s.) 748; 34 L. J. C. P. 195; 12 L. T. 349); station master referring to an absconding porter held admissible (*Kirkstall v. Furness*, L. R. 9 Q. B. 468; 43 L. J. Q. B. 142; 30 L. T. 783; 22 W. R. 876); pawnbroker's shopman admitting he had some plate (*Garth v. Howard*, 8 Bing. 451); attorney's admissions confined to the suit pending (*Wagstaff v. Wilson*, 4 B. & Ad. 339); inducing third party to act on representation, held estoppel (*Blackstone v. Wilson*, 26 L. J. Ex. 229); farm agents ordering timber to be cut, not binding as to title (*Ley v. Peter*, 26 L. J. Ex. 239; 3 H. & N. 101); presumption that servant has necessary powers for the work at the time (*Pickering v. Busk*, 15 East, 45); if agent merely to deliver, no power to give warranty (*Woodin v. Burford*, 2 Cr. & M. 391; 4 Tyr. 264); special servant sent to sell horse, and warranting it, not binding (*Brady v. Tod*, 9 C. B. (N.s.) 502; 30 L. J. C. P. 223; 4 L. T. 212); but if sent to a fair to sell horse, held implied authority to warrant (*Brooks v. Hassall*, 49 L. T. 569); implied authority not extended to collateral transactions, as clerk receiving money out of usual course (*Sanderson v. Bell*, 2 Cr. & M. 304); broker receiving rent, no authority implied (*Boulton v. Reynolds*, 29 L. J. Q. B. 11; 2 E. & E. 369; 6 Jur. (N.s.) 46); general servant's authority not restricted by secret orders (*Nickson v. Brohan*, 10 Mod. 109); letter of instructions not shown, held breach by agent (*Cahill v. Dawson* 3 C. B. (N.s.)



106; 26 L. J. C. P. 253; 3 Jur. (N.S.) 1128); brother of charterer signing, held for the jury whether authorised (*Smith v. MacGuire*, 3 H. & N. 554; 27 L. J. Ex. 465); master contracting that his coachman provide horses, not exempt from liability to third parties (*Rimell v. Sumpayo*, 1 C. & P. 255; *Hiscox v. Greenwood*, 4 Esp. 174); servant pledging master's credit, inferred from course of dealing (*Todd v. Robinson*, Ry. & M. 217; *Gilman v. Robinson*, Ry. & M. 226); though servant provided with money to pay, master may be liable if servant do not pay, as shopman ordering goods (*Summers v. Solomon*, 7 E. & B. 879; 26 L. J. Q. B. 301; 3 Jur. (N.S.) 962); principal authorising credit to be pledged liable to creditor, if no contrary conduct (*Heald v. Kenworthy*, 10 Ex. 739; 24 L. J. Ex. 76; 1 Jur. (N.S.) 70); though servant made a bad bargain, principal bound (*Griffiths v. Jones*, 42 L. J. Ch. 468; 15 Eq. 279; 21 W. R. 470); tradesman knowing the master and the servant, and trusting servant (*Thomson v. Davenport*, 9 B. & C. 78); if master sued on bill of lading, owner, as undisclosed principal, not suable (*Priestley v. Fernie*, 3 H. & C. 977; 34 L. J. Ex. 172; 13 L. T. 208; 13 W. R. 1089; 11 Jur. (N.S.) 813); notice to tradesmen not to trust servant to be given before acted on (*Chappell v. Bray*, 30 L. J. Ex. 24; 6 H. & N. 145; 3 L. T. 278); notice to servant not to pledge master's credit, no defence against tradesmen (*Trueman v. Loder*, 11 A. & E. 589); master usually giving servant money to buy meat not liable to tradesman (*Stubbing v. Heintz*, 1 Peake, 66; *Pearce v. Rogers*, 3 Esp. 214); servant without master's knowledge ordering goods, master not liable if no previous dealing (*Maunder v. Conyers*, 2 Stark. 281); servant left in charge of master's children, with an allowance, master not liable (*Atkyns v. Pearce*, 2 C. B. (N.S.) 763; 26 L. J. C. P. 252; 3 Jur. (N.S.) 1180).

**Liability if Servant act against Orders.**—Master equally liable for negligence of servant, though servant act contrary to orders (*Green v. Omnibus*, 7 C. B. (N.S.) 290; 29 L. J. C. P. 13; 2 L. T. 95; 8 W. R. 88; 6 Jur. (N.S.) 228); carman driving round on his own business, master not liable (*Storey v. Ashton*, L. R. 4 Q. B. 476; 38 L. J. Q. B. 223; 10 B. & S. 337; 17 W. R. 727); liable for one omnibus racing with another (*Limpus v. Omnibus*, 1 H. & C. 526; 32 L. J. Ex. 35); for jury to say if act fairly within scope of authority, as railway porter removing passenger (*Bayley v.*



*Manchester*, L. R. 8 C. P. 472); carman leaving horse unattended in street contrary to orders, jury to say if acting within scope (*Whatman v. Pearson*, L. R. 3 C. P. 422).

**Master not liable for Servant's Wilful Acts and Acts *ultra vires*.**—Master not liable for servant's acts if not done in course of master's business; carman driving on his own private business (*Rayner v. Mitchell*, 2 C. P. D. 357; 25 W. R. 633); carman going a long round on his own business (*Storey v. Ashton*, L. R. 4 Q. B. 476; 38 L. J. Q. B. 223; 10 B. & S. 337; 17 W. R. 727); if servant out of his way, but master is cognizant, master may be liable (*Mitchell v. Crassweller*, 13 C. B. 237; 22 L. J. C. P. 100; 17 Jur. (N.S.) 716); master liable though servant merely deviated (*Joel v. Morrison*, 6 C. & P. 501); carter without authority letting stranger ride in cart, master not liable (*Lygo v. Newbold*, 9 Ex. 302; 23 L. J. Ex. 108); warehouse-keeper directing bales of A. to be piled by A.'s men, held not liable (*Murphy v. Cavalli*, 3 H. & C. 462; 34 L. J. Ex. 14; 13 W. R. 165; 10 Jur. (N.S.) 1207); railway ticket clerk held to be acting beyond powers in imprisoning passenger (*Allen v. L. S. W.*, L. R. 6 Q. B. 65; 40 L. J. Q. B. 55; 19 W. R. 127; 23 L. T. 612; 11 Cox, 621); foreman porter no authority to imprison suspected person (*Edwards v. L. N. W.*, L. R. 5 C. P. 445; 39 L. J. C. P. 241; 22 L. T. 656; 18 W. R. 834); constable in company's service imprisoning after assault had ceased, company not liable (*Walker v. S. E. R.*, L. R. 5 C. P. 640; 39 L. J. C. P. 346; 23 L. T. 14; 18 W. R. 1032); station master acting *ultra vires*, as by imprisoning for non-payment, company not liable (*Poulton v. L. S. W.*, L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; 17 L. T. 11; 8 B. & S. 616); master not liable for servant's wilful acts, if these not essential to master's business, as wilfully driving against stranger (*Macmanus v. Crickett*, 1 East, 106); driver wantonly striking a stranger's horses, master not liable (*Croft v. Alison*, 4 B. & Ald. 590); omnibus driver striking rival driver, held for jury to say if in furtherance of master's business (*Ward v. Omnibus*, 42 L. J. C. P. 265; 28 L. T. 850); clerk of firm leaving lavatory tap running, masters not liable (*Stevens v. Woodward*, 6 Q. B. D. 318; 50 L. J. Q. B. 231; 41 L. T. 153; 29 W. R. 506; 45 J. P. 603); carpenter in lighting pipe and setting fire to customer's premises, employer not liable (*William v. Jones*, 3 H. & C. 602; 33 L. J. Ex. 297; 13 L. T. 300; 13 W. R. 1023; 11 Jur. (N.S.) 843); railway servant

charging passenger for breach of bye-law, company not liable (*E. C. R. v. Broom*, 6 Ex. 314; 20 L. J. Ex. 196; 15 Jur. 297); bailiff impounding a horse trespassing, held master not liable (*Lyons v. Martin*, 8 A. & E. 512; 3 N. & P. 509); manager of sewage farm trespassing to ease a sewer, held master not liable (*Bolingbroke v. Swindon*, L. R. 9 C. P. 575; 43 L. J. C. P. 575; 30 L. T. 723; 23 W. R. 47); sub-contractor using without authority contractor's crane, held contractor not liable (*Gordon v. Rolt*, 4 Ex. 365; 18 L. J. Ex. 132; 7 D. & L. 87); steward with leave using master's horse and cart for his own business, master not liable (*Cormick v. Digby*, 9 Ir. R. C. L. 557); bank manager prosecuting customer for attempt to defraud, bank not liable (*Bank v. Owston*, 4 App. C. 270; 18 L. J. Pr. C. 25; 40 L. T. 500).

**Master not liable for Fellow-Servant's Negligence.**—Master not impliedly liable to servant for fellow-servant's negligence (*Bartonshill v. Reid*, 1 Paters. 785; 3 Macq. 266); whether the two servants are at the time engaged in a common operation or not, or whatever be the relative grade of service, as manager and collier (*Wilson v. Merry*, 2 Paters. 1597; L. R. 1 Sc. Ap. 326); master not liable so long as he used care in engaging the fellow-servants (*ibid.*); man unloading coal barges injured by one of the brewery-men moving barrels, master not liable (*Charles v. Taylor*, 3 C. P. D. 496; 38 L. T. 773; 27 W. R. 32); miner injured by the underlooker's negligence (*Hall v. Johnson*, 3 H. & C. 589; 34 L. J. Ex. 222; 11 L. T. 779; 13 W. R. 411; 11 Jur. (n.s.) 180); workman injured by the certificated manager's negligence (*Howell v. Landore*, L. R. 10 Q. B. 62; 44 L. J. Q. B. 25; 23 W. R. 335); railway labourer injured by negligent railway guard (*Tunney v. Midland*, L. R. 1 C. P. 291; 12 Jur. (n.s.) 691); labourer filling trucks injured by a fellow-servant fixing temporary rails, master not liable (*Loregrove v. London*, 10 C. B. (n.s.) 669; 33 L. J. C. P. 329; 10 L. T. 718; 12 W. R. 988; 10 Jur. (n.s.) 879); workman at locomotive engine, negligence of foreman as to travelling crane, the grade of service immaterial (*Feltham v. England*, L. R. 2 Q. B. 33; 7 B. & S. 676; 36 L. J. Q. B. 14; 15 W. R. 151); servant impliedly takes risks of the premises, as chorus singer at theatre falling down stage trap (*Seymour v. Maddox*, 16 Q. B. 326; 20 L. J. Q. B. 327; 15 Jur. 723); as railway guard injured by insufficient staff of porters, and knowing this, master not liable (*Skipp v. E. C. R.*, 9 Ex. 223; 23 L. J.

Ex. 23; *Saxton v. Hawksworth*, 26 L. T. 851); workman injured by foreman using unsound pole for scaffold, master not selecting a careful fellow-servant (*Wigmore v. Jay*, 5 Ex. 354; 19 L. J. Ex. 300; 14 Jur. 837; see now 43 & 44 Vict. c. 42); railway guard injured by negligence of engine driver, master not liable (*Hutchinson v. York*, 5 Ex. 352; 19 L. J. Ex. 296); lighterman injured by one of the other men who hoisted sacks (*Lovell v. Howell*, 1 C. P. D. 161; 45 L. J. C. P. 387; 34 L. T. 183; 24 W. R. 672); miner killed by careless workman not stopping the cage when drawn up (*Bartonshill v. Reid*, 1 Paters. 785; 3 Macq. 266); workman on scaffold injured by foreman using insufficient boards (*Galagher v. Piper*, 16 C. B. (N.S.) 669; 32 L. J. C. P. 335); railway carpenter injured by porters shifting an engine (*Morgan v. Neath*, L. R. 1 Q. B. 149; 5 B. & S. 570; 33 L. J. Q. B. 260; 13 L. 564; 14 W. R. 144); engineer injured by chief engineer's negligence in using a defective winch (*Searle v. Lindsay*, 11 C. B. (N.S.) 429; 31 L. J. C. P. 106; 10 W. R. 69; 5 L. T. 427; 8 Jur. (N.S.) 746).

**Master's Liability, if not really a Fellow-Servant.**—The master is liable if the servant who was injured was really the servant of another master, as porter of two companies working at a joint railway station (*Swainson v. N. E. R.*, 3 Ex. D. 341; 47 L. J. Q. B. 372; 38 L. T. 201; 26 W. R. 413; *Vose v. Lancashire*, 2 H. & N. 728; 27 L. J. Ex. 249; 4 Jur. (N.S.) 364; *Warburton v. G. W. R.*, L. R. 2 Ex. 30; 36 L. J. Ex. 9; 15 W. R. 108; 15 L. T. 361); dock labourer employed by stevedore injured by one of crew, held shipowner not liable (*Murray v. Currie*, L. R. 6 C. P. 24; 40 L. J. C. P. 26; 23 L. T. 557; 19 W. R. 104); servant of A. lent to B. injured by B.'s servant, held B. not liable (*Rourke v. White Moss*, 2 C. P. D. 205; 46 L. J. C. P. 283; 36 L. T. 49; 25 W. R. 263); licensed pilot and shipowner's seamen not fellow-servants (*Smith v. Steele*, L. R. 10 Q. B. 125; 44 L. J. Q. B. 60; 32 L. T. 195; 23 W. R. 388); railway porter's truck running against passenger going to other line (*Tebbutt v. Bristol*, L. R. 6 Q. B. 73; 40 L. J. Q. B. 78; 23 L. T. 772; 19 W. R. 383); negligence on another railway, there being running powers, equally liable with servient railway (*Thomas v. Rhymney*, L. R. 6 Q. B. 266; 40 L. J. Q. B. 89; 24 L. T. 145; 19 W. R. 477); railway signal neglected by the company having running powers, no liability (*Wright v. Midland*,

L. R. 8 Ex. 137; 42 L. J. Ex. 89; 29 L. T. 436; 21 W. R. 460).

**Liability of Master of Servant Common to Two Masters.**—Master not liable if the two servants were common to both masters (*Wiggett v. Fox*, 11 Ex. 832; 25 L. J. Ex. 188; 2 Jur. (n.s.) 955); master not liable if a volunteer was helping his servant, both being treated as fellow-servants (*Degg v. Midl. R.*, 1 H. & N. 773; 26 L. J. Ex. 171; 3 Jur. (n.s.) 395); volunteer assisting to put bales of cotton into lorry; but where each customer helps station master as part of the business of sending cattle by railway, then customer is not a volunteer or fellow-servant (*Wright v. L. N. W.*, 1 Q. B. D. 252; 45 L. J. Q. B. 570; 33 L. T. 830); consignee of coal waggon helping station-master not a fellow-servant (*Holmes v. N. E. R.*, L. R. 6 Ex. 123; 40 L. J. Ex. 121; 24 L. T. 69); if master personally or by his partner, is negligent, liable to servant injured thereby, as when working with servant (*Ashworth v. Stamwix*, 3 E. & E. 701; 30 L. J. Q. B. 182; 4 L. T. 85; 7 Jur. (n.s.) 462); master acting as his own superintendent of coal mine held liable (*Mellor v. Shaw*, 30 L. J. Q. B. 333; 1 B. & S. 437; 7 Jur. (n.s.) 845); working at joining carriages to locomotives, too few porters, master liable (*Skipp v. E. C. R.*, 9 Ex. 223; 23 L. J. Ex. 23); working at new building, there being a clerk of works, fall of a floor, held fellow-servants (*Brown v. Accrington*, 3 H. & C. 511; 34 L. J. Ex. 208; 13 L. T. 94); corporation, like private individual, not liable for the fellow-servant's negligence (*Allen v. New Gas*, 1 Ex. D. 251; 45 L. J. Ex. 668; 34 L. T. 541).

**Master Bound to Supply Sound Tackle to Servant.**—Master at common law bound to supply sound tackle to servant whom he employs in dangerous work; miner injured by stone falling, of which he had often complained to master, master held liable (*Paterson v. Wallace*, 1 Paters. 389; 1 Macq. 748); miner injured by stone falling out of shaft as he was ascending, master liable (*Brydon v. Stewart*, 1 Paters. 447; 2 Macq. 30); workman injured by a patent defect in bolt used for raising cylinder (*Weems v. Love*, 1 Paters. 1044; 4 Macq. 215); workman cleaning machine, and suddenly set in motion (*Watling v. Oastler*, L. R. 6 Ex. 93; 40 L. J. Ex. 43; 23 L. T. 815; 19 W. R. 388); bound to warn servant of hidden danger (*Mellor v. Shaw*, 1 B. & S. 437; 30 L. J. Q. B. 333; 7 Jur. (n.s.) 845); master not

bound to warrant tools against latent defects, coach breaking down (*Winterbotham v. Wright*, 10 M. & W. 115); staging supplied to paint ship, dock-keeper held liable, though having no control over workmen (*Heaven v. Pender*, 11 Q. B. D. 503; 52 L. J. Q. B. 702; 49 L. T. 357; 47 J. P. 709); master bound to provide tackle to servant which has no patent defect (*Roberts v. Smith*, 2 H. & N. 213; 26 L. J. Ex. 319; 3 Jur. (n.s.) 469); if master knew a ladder was defective, held liable, though not alleging that servant did not know also (*Williams v. Clough*, 3 H. & N. 258; 27 L. J. Ex. 325); suing master for unsafe premises, must allege servant's ignorance of danger (*Griffiths v. London*, 13 Q. B. D. 259; 53 L. J. Q. B. 504; 51 L. T. 533; 33 W. R. 35); shipowner liable for supplying stevedore with unsound chain, which he might have known was unsound (*Murphy v. Phillips*, 35 L. T. 477; 24 W. R. 647); negligence in not making proper rules, killed by shunting of engine (*Vose v. Lancaster*, 2 H. & N. 728; 27 L. J. Ex. 249; 4 Jur. (n.s.) 364).

**Workman's own Negligence or Wilful Risk.**—If workman's own negligence lead to accident, the master not liable; workman using a particular hook for lifting from well (*Griffiths v. Gidlow*, 3 H. & N. 648; 27 L. J. Ex. 405); workman in a dark railway tunnel, taking the risks (*Woodley v. Metrop. R.*, 2 Ex. D. 384; 46 L. J. Ex. 521); workman knowingly using defective rope in mine, master not liable, though foreman also knowing defect (*Senior v. Ward*, 1 E. & E. 385; 28 L. J. Q. B. 139; 7 W. R. 261; 5 Jur. (n.s.) 172); labourer in hoisting sugar moulds, clip known by him to be defective, master not liable (*Dynen v. Leach*, 26 L. J. Ex. 221); workman injured by defective ladder, no evidence of knowledge, master not liable, but if engaging incompetent servants otherwise (*Ormond v. Holland*, E. B. E. 102); workman knowing ladder dangerous in position, yet working, master not liable (*Alsop v. Yates*, 27 L. J. Ex. 156); if workman, knowing dangers of work, take all risk, master not liable (*Holmes v. Clark*, 7 H. & N. 937; 31 L. J. Ex. 356; 9 L. T. 178; 9 W. R. 419; 7 Jur. (n.s.) 397); master engaging servant to cut up carcasses, which master knew to be diseased, and which poisoned servant, master held liable (*Davies v. England*, 33 L. J. Q. B. 321; 10 Jur. (n.s.) 1235); master, with servant's knowledge, neglecting statutory regulation, held liable (*Britton v.*



*G. W. Co.*, L. R. 7 Ex. 130; 41 L. J. Ex. 99; 27 L. T. 125; 20 W. R. 525); master employing inexperienced boy in managing machinery held liable (*Grizzle v. Frost*, 3 F. & F. 622); master, when sued for servant's negligence, may set up contributory negligence of plaintiff as defence, case of level crossing (*Ellis v. L. S. W.*, 2 H. & N. 424; 26 L. J. Ex. 349; 3 Jur. (N.S.) 1008); servant not bound to undertake personal danger, and, if injured, is without remedy (*Woodley v. Metropolitan*, 2 Ex. D. 388; 46 L. J. Ex. 521).

**Servants Using Machinery.**—Fencing in mines (35 & 36 Vict. c. 76, s. 51); fencing in factories (41 Vict. c. 16, ss. 5—9); fencing threshing machines (41 Vict. c. 12, s. 1); general rule as to person supplying machine being bound to make it reasonably fit for use, wash-house drying machine (*Cowley v. Sunderland*, 6 H. & N. 565; 30 L. J. Ex. 127; 4 L. T. 720; 9 W. R. 668); master using machine not bound to fence as against mere licensee, but only as against servant (*Bolch v. Smith*, 7 H. & N. 736; 31 L. J. Ex. 203; 10 W. R. 387); contributory negligence an answer, even though statute violated (*Caswell v. Worth*, 5 E. & B. 849; 25 L. J. Q. B. 121; 2 Jur. (N.S.) 116); master not liable if trespasser intermeddle with machine (*Mangan v. Atterton*, 4 H. & C. 388; L. R. 1 Ex. 239; 35 L. J. Ex. 161; 14 L. T. 411; 14 W. R. 771); placing *chevaux de frise* on highway at dark night held liable (*Clark v. Chambers*, 3 Q. B. D. 327; 47 L. J. Q. B. 427; 38 L. T. 454; 26 W. R. 613); duty to fence not a question for jury as to probable danger (*Doel v. Shepherd*, 5 E. & B. 856; 25 L. J. Q. B. 124; 2 Jur. (N.S.) 218); mill-gearing, as regards fencing, includes more machinery than the source of motion (*Holmes v. Clarke*, *supra*, p. 52); part of the machine connected, yet distinct, master not liable if machine at rest (*Coe v. Platt*, 7 Ex. 923; 22 L. J. Ex. 164); statutory penalty does not impliedly exclude an action (*Couch v. Steel*, 3 E. & B. 402; 23 L. J. Q. B. 121; 18 Jur. 515; *Atkinson v. Newcastle*, 2 Ex. D. 441; 46 L. J. Ex. 775; 25 W. R. 794; 36 L. T. 761).



## CHAPTER IV.

### DUTIES AND OBLIGATIONS OF SERVANT.

<i>Servant's Duties and Obligations,</i> p. 54.	<i>For Sickness,</i> p. 59.
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<i>For insufficient Skill,</i> p. 58.	<i>Post Office Servants,</i> p. 64.
	<i>Larceny by Servant,</i> p. 64
	<i>Servants' other Offences against</i> <i>Master,</i> p. 66.

**Servant's Liabilities.**—Servant bound to indemnify master for loss by negligence (*Green v. New River*, 4 T. R. 590); captain smuggling and forfeiting vessel, held liable to owner of ship (*Blewitt v. Hill*, 13 East, 12); master entitled to sue servant for damages caused by misconduct (*Turner v. Robinson*, 5 B. & Ad. 789; 2 N. & M. 829; *Ridgway v. Hungerford*, 3 A. & E. 171; 4 N. & M. 797); servant bound to do no wilful act injurious to master, as driving away customers (*Nichol v. Martin*, 2 Esp. 734); master suing servant for money had and received must prove receipt and the not paying over (*Evans v. Birch*, 3 Camp. 10; *Attlee v. Backhouse*, 3 M. & W. 633); third parties, injured by servants joining in misrepresentations for benefit of their master, may sue such servants (*Cullen v. Thompson*, 2 Paters. 1143; 4 Macq. 424); bank manager falsely representing solvency of customer (*Swift v. Jewsbury*, L. R. 9 Q. B. 301; 43 L. J. M. C. 112; 30 L. T. 31; 22 W. R. 319); servant restrained from soliciting master's customers (*Lee v. Haley*, 39 L. J. Ch. 284; 5 Ch. 155; 22 L. T. 258; 18 W. R. 242); restraining fraudulent use of trader's name (*Hookham v. Pottage*, 8 Ch. 91; 27 L. T. 595; 21 W. R. 47); suing servant for not entering on service, as surgeon of ship (*Richards v. Hayward*, 2 M. & Gr. 574; 2 Sc. N. R. 670); opera singer not entering service (*Lumley v. Wagner*, 1 De G. M. & G. 604; 21 L. J. Ch. 898; 16 Jur. 871; *Montague v. Flockton*, 16 Eq. 189; 42 L. J. Ch. 677; 28 L. T. 580; 21 W. R. 668; *Bettini v. Gye*, 1 Q. B. D. 183; 45 L. J. Q. B. 209; 34 L. T. 246; 24 W. R. 551); suing servant for penalty agreed on for leaving without notice (*Messiter v. Rose*, 13 C. B. 162; 22 L. J. C. P. 78); permanent illness an excuse for performance by servant (*Boast v. Firth*, L. R. 4 C. P. 1; 38 L. J. C. P. 1; 19 L. T. 264; 17

W. R. 29); same in all contracts purely personal (*Robinson v. Davison*, L. R. 6 Ex. 269; 40 L. J. Ex. 172; 24 L. T. 755; 19 W. R. 1036); servant robbed held an excuse for losing master's money (*Walker v. British*, 18 Q. B. 277; 21 L. J. Q. B. 257); master suing servant for the earnings paid to servant, broker's secret-service money (*Morison v. Thompson*, L. R. 9 Q. B. 480; 43 L. J. Q. B. 215; 30 L. T. 869; 22 W. R. 859); photographer's servant treated as real author, and not the employer (*Nottage v. Jackson*, 11 Q. B. D. 627; 52 L. J. Q. B. 760; 49 L. T. 339; 32 W. R. 106); inn-keeper's lien on goods left by servant binds master (*Snead v. Watkins*, 1 C. B. (n.s.) 267; 26 L. J. C. P. 57); master bound by servant's acts, though servant an infant or married woman (*Lindus v. Bradwell*, 5 C. B. 583; 17 L. J. C. P. 12; 12 Jur. 230; *Prestwick v. Marshall*, 7 Bing. 565; 5 M. & P. 513); servant not personally liable if contracting in master's name (*Higgins v. Senior*, 8 M. & W. 834); if contracting solely in servant's name, servant liable (*Williamson v. Barton*, 31 L. J. Ex. 171; 7 H. & N. 899; 5 L. T. 800; 8 Jur. (n.s.) 341); if servant's own name used in contract, master cannot sue on it (*Humble v. Hunter*, 12 Q. B. 310; 17 L. J. Q. B. 350; 12 Jur. 121); as accepting bill in servant's own name (*Nicholls v. Diamond*, 9 Ex. 156; 23 L. J. Ex. 1; *Mare v. Charles*, 5 E. & B. 978; 25 L. J. Q. B. 119; 2 Jur. (n.s.) 234); in all cases a question of intention and inference, whether servant is liable personally (*Green v. Kopke*, 18 C. B. 549; 25 L. J. C. P. 297; 2 Jur. (n.s.) 1049; *Deslandes v. Gregory*, 30 L. J. Q. B. 36; 2 E. & E. 602; 8 W. R. 585; 6 Jur. (n.s.) 651); servant jointly liable for acts of commission (*Pearson v. Graham*, 6 A. & E. 902); servant liable for acts of conversion (*Lee v. Robinson*, 18 C. B. 599; 25 L. J. C. P. 249; 2 Jur. (n.s.) 1093).

**Payment to Servant for Master.**—Servant cannot set up *jus tertii* against his master (*Ireland v. Thomson*, 4 C. B. 171; 17 L. J. C. P. 241); depositor in warehouse solely looked to (*Kieran v. Saunders*, 6 A. & E. 515; 1 N. & P. 625); wharfinger looking to manufacturer (*Holl v. Griffin*, 10 Bing. 246; 3 M. & Sc. 732); banker of servant cannot set up master's right against servant (*Tassell v. Cooper*, 9 C. B. 509); notice to servant will not make servant trustee for third person (*Stuart v. Welch*, 4 My. & C. 323); solicitor advising trustees in breach of trust (*Fyler v. Fyler*, 3 Beav.

558); sub-agent is accountable only to his own superior, the agent (*Cobb v. Becke*, 6 Q. B. 930; 14 L. J. Q. B. 108; 9 Jur. 439); case of country attorney and London agent (*Robbins v. Fennel*, 11 Q. B. 248; 17 L. J. Q. B. 77; 12 Jur. 157); servant may set up *jus tertii* in case of master's fraud (*Hardman v. Willcock*, 9 Bing. 382 *n*); case of property pledged (*Chéese-man v. Exall*, 6 Ex. 341); if contract of service is at an end, *jus tertii* allowed; keep of horse during sale (*Murray v. Mann*, 2 Ex. 538; 17 L. J. Ex. 256; 12 Jur. 634); payment to one apparently in master's service held to bind master (*Barrett v. Deere*, M. & M. 200); one brother making charter-party held to bind the other (*Smith v. MacGuire*, 3 H. & N. 561; 27 L. J. Ex. 465).

**Duties of Servant as to Obeying Orders, and Power of Dismissal.**—Breach justifying dismissal must go to root of engagement (*Simpson v. Crippin*, L. R. 8 Q. B. 14); usual duty to obey all lawful orders in the particular service (*Priestley v. Fowler*, 3 M. & W. 1; 1 Jur. 987); housemaid not entitled, without leave, to visit sick relative (*Turner v. Mason*, 14 M. & W. 112; 14 L. J. Ex. 311; 2 D. & L. 898); must be moral misconduct or wilful neglect to justify dismissal (*Callo v. Brouncker*, 4 C. & P. 518); farm servant refusing to go errand before his dinner dismissable (*Spain v. Arnot*, 2 Stark. 256); servant hired for one duty not bound to do duty of servant hired for different duty; a buyer of lace not bound to card lace (*Price v. Mouatt*, 11 C. B. (n.s.) 508); workman engaged to invent designs in lace not bound to do common repairs of machines (*Jackson v. Hill*, 13 Q. B. D. 618; 49 J. P. 118); servant not bound to undertake personal danger, and if injured by risking it has no remedy (*Woodley v. Metropolitan*, 2 Ex. D. 388; 46 L. J. Ex. 521); servant may leave service if cruelly treated, as seaman (*Edward v. Trevellock*, 4 E. & B. 59; 24 L. J. Q. B. 9; 1 Jur. (n.s.) 110); seaman hired for one voyage not bound to go a different voyage (*Burton v. Pinkerton*, L. R. 2 Ex. 340; 30 L. J. Ex. 137; 17 L. T. 15); waggoner refusing to work without extra beer dismissable (*Lilley v. Elwin*, 11 Q. B. 742; 17 L. J. Q. B. 132; 12 Jur. 623); messman of regiment refusing for half an hour to send up dinner, dismissable (*Churchward v. Chambers*, 2 F. & F. 229); journeyman painter going, contrary to orders, on grass of gentleman's park to poach, dismissable (*Read v. Dunsmore*, 9 C. & P. 588); seaman refusing to work ship, except to English port,

dismissable (*Renno v. Bennett*, 3 Q. B. 768; 12 L. J. Q. B. 17); insulting and disorderly conduct to master, servant may be turned out by force (*Shaw v. Chairtie*, 3 C. & K. 25); not attending all the rehearsals, no ground of rescinding contract with artist (*Bellini v. Gye*, 1 Q. B. D. 183; 45 L. J. Q. B. 209; 34 L. T. 246; 24 W. R. 551); servant not dismissable merely for sulking (*Callo v. Brouncker*, 4 C. & P. 518); servant only dismissable for disobeying reasonable command (*Jacquot v. Bourra*, 7 Dowl. 348; 3 Jur. 776); single instance of failure, if vital, a sufficient ground of dismissal (*Poussard v. Spiers*, 1 Q. B. D. 410; 45 L. J. Q. B. 621; 34 L. T. 572; 24 W. R. 819); case of European correspondent (*Gould v. Webb*, 4 E. & B. 933; 24 L. J. Q. B. 205; 1 Jur. (N.S.) 821); servant getting a commission from customer of master for goods supplied dismissable (*Horton v. Macmurtry*, 5 H. & N. 667; 29 L. J. Ex. 260; 8 W. R. 285); manager of cotton company dismissed for serious disobedience (*Cussons v. Skinner*, 11 M. & W. 161); assistant-master in school absent four days, but no injury caused, held not dismissable (*Fillieul v. Armstrong*, 7 A. & E. 557; 2 N. & P. 406; 1 Jur. 921); domestic servant staying out all night usually dismissable (*Robinson v. Hindman*, 3 Esp. 235); watchmaker's workman liable to master for not keeping with care customer's watch (*Clark v. Earnshaw*, 1 Gow, 30); workman bound to protect master's goods against danger (*Leck v. Maester*, 1 Camp. 138); treasurer of building society not bound to account for money if it was stolen from him without any blame of his (*Walker v. British*, 18 Q. B. 277; 21 L. J. Q. B. 257; 16 Jur. 885); master keeping too few servants for the work, liable to customer for injury to goods (*Leck v. Maester*, 1 Camp. 138); if servant's carelessness cause injury dismissable (*Arding v. Lomas*, 24 L. J. Ex. 80); servant disclosing master's business secrets dismissable (*Beeston v. Collyer*, 2 C. & P. 607); whether conduct justified dismissal is question of fact (*East Anglian v. Lythgoe*, 2 L. M. & P. 221; 10 C. B. 727; 20 L. J. C. P. 84); master bound to show that he knew of servants conspiring to injure before dismissing servant (*Mercer v. Whall*, 5 Q. B. 447; 14 L. J. Q. B. 267; 9 Jur. 576); if advising master's apprentice to quit dismissable (*Turner v. Robinson*, 5 B. & Ad. 789; 2 N. & M. 829); clerk entering protest in directors' minute book dismissable (*Ridgway v. Hungerford*, 3 A. & E. 171; 4 N. & M. 797); making fraudulent entries in master's books rightly discharged (*Baillie v. Kell*, 4 Bing. N. C. 638);

acting-manager exciting discontent among the actors dismissable (*Lacy v. Osbaldiston*, 8 C. & P. 80); servant acting contrary to express clause in agreement dismissable (*Bray v. Chandler*, 18 C. B. 718); servant claiming to be a partner dismissable (*Amor v. Fearon*, 9 A. & E. 548; 1 P. & D. 398); servant wilfully appropriating master's money to a different purpose dismissable (*Smith v. Thompson*, 8 C. B. 44; 18 L. J. C. P. 314); manager of factory allowing third party to control goods supplied, dismissable (*Horton v. Macmurtry*, 5 H. & N. 667; 29 L. J. Ex. 260); traveller not remitting sums punctually dismissable (*Blenkarn v. Hodges*, 16 L. T. 608); master may use subsequent knowledge as defence for dismissing servant for misappropriating (*Spotswood v. Barrow*, 5 Ex. 110; 19 L. J. Ex. 226); subsequent discovery of fraud in former place, no justification of dismissal (*Andrews v. Garstein*, 31 L. J. C. P. 15; 10 C. B. (N.S.) 444; 7 Jur. (N.S.) 1124; 4 L. T. 580; 9 W. R. 782); domestic servant being with child dismissable (*R. v. Brampton*, Cald. 11); actionable to say servant had a child (*Connors v. Justice*, 13 Ir. R. C. L. 451); servant not compellable to be examined as to whether she is in family way (*Latter v. Braddell*, 50 L. J. Q. B. 448; 44 L. T. 369; 29 W. R. 366; 45 J. P. 520); clerk indecently assaulting maid dismissable (*Atkin v. Acton*, 4 C. & P. 208); out-door workman not usually dismissable for immoralities not connected with service (*Read v. Dunsmore*, 9 C. & P. 594); servant habitually drunk dismissable (*Speck v. Phillips*, 5 & W. 279; 7 Dowl. 470); governess for concealing her previous divorce not dismissable (*Fletcher v. Krell*, 42 L. J. Q. B. 55; 28 L. T. 105); servant for repeated acts of insolence dismissable, but not for once (*Edwards v. Levy*, 2 F. & F. 94); for jury to say if professed ground was real ground of dismissal (*Smith v. Allen*, 3 F. & F. 157); servant absent to seek another situation not usually sufficient for dismissal (*R. v. Polesworth*, 2 B. & Ald. 483); servant for noisy and turbulent acts late at night dismissable (*Shaw v. Chairitie*, 3 C. & K. 21); some holidays allowable to servant (*R. v. Stokoe*, 5 Q. B. 303); no misconduct to solicit custom from customers after leaving service (*Nichol v. Martyn*, 2 Esp. 732).

**Dismissal of Servant for Unskilfulness.**—Skilled servant as a scene painter, if grossly unskilful, dismissable (*Harmer v. Cornelius*, 5 C. B. (N.S.) 236; 28 L. J. C. P. 85; 4 Jur. (N.S.) 1110); same as to valuer of ecclesiastical property



(*Jenkins v. Betham*, 15 C. B. 168; 24 L. J. C. P. 94; 1 Jur. (n.s.) 237); same as to superintendent of railway contractor's works (*Searle v. Ridley*, 28 L. T. 411); want of skill as parliamentary agents (*Bulmer v. Gilman*, 4 M. & Gr. 108; 4 Sc. N. R. 781; 1 D. & L. 367; 6 Jur. 761); want of skill as patent agent (*Lee v. Walker*, L. R. 7 C. P. 121; 41 L. J. C. P. 91; 26 L. T. 70); surgeon's gross negligence (*Seare v. Prentice*, 8 East, 348); unskilfulness a question of degree for a jury (*Lanphier v. Phipos*, 8 C. & P. 475); want of ordinary skill as surgeon is to be decided by jury (*Rich v. Pierpont*, 3 F. & F. 35).

**Dismissal of Servant for Sickness.**—Illness of servant no ground for discharge of contract unless long continued (*Cuckson v. Stones*, 1 E. & E. 248; 28 L. J. Q. B. 25); actor too ill to attend rehearsals, justifying rescission of contract (*Poussard v. Spiers*, 1 Q. B. D. 414; 45 L. J. Q. B. 621; 34 L. T. 572; 24 W. R. 819); becoming deranged, yet contract of hiring continuing (*R. v. Sutton*, 5 T. R. 657); illness of servant by act of God a defence to action for breach, as in apprenticeship (*Boast v. Firth*, L. R. 4 C. P. 1; 38 L. J. C. P. 1; 19 L. T. 264; 17 W. R. 29); where contract is to do work and supply materials for given sum, and employer prevents completion, workman may recover (*Appleby v. Meyers*, L. R. 2 C. P. 651; 36 L. J. C. P. 331; 16 L. T. 669); servant though ill for five weeks, may return and sue for wages (*Carr v. Hadrill*, 39 J. P. 246); servant, though absent from illness caused by his misconduct, contract not discharged (*R. v. Raschen*, 38 L. T. 38; 42 J. P. 264); musician too ill to play at concert excused by act of God (*Robinson v. Davison*, L. R. 6 Ex. 269; 40 L. J. Ex. 172; 24 L. T. 755; 19 W. R. 431).

**Frauds, &c., in particular Trades.**—Journeyman shoemaker, searching for leather (9 Geo. 1, c. 27); how far repealed by 30 & 31 Vict. c. 141 (38 & 39 Vict. c. 86); hat manufacture, woollen, &c. (22 Geo. 2, c. 27; 17 Geo. 3, c. 56); how far repealed by 38 & 39 Vict. c. 86; as to imprisonment under 17 Geo. 3, c. 56, if no recognizance by appellant (*R. v. Twyford*, 5 A. & E. 430; *R. v. Bolton*, 2 D. & L. 510); warehouse held a "place" (*R. v. Edmundson*, 2 E. & E. 77; 28 L. J. M. C. 213); clock & watch manufacture, workmen purloining and pledging parts of materials (27 Geo. 2, c. 7); pickers, spinners, weavers of wool, not



returning tools and materials (14 Geo. 3, c. 25); justices informing convicted defendant of his right to appeal, but need not state the steps (*R. v. West Riding York*, 3 M. & Sc. 493); costs of appeal held ancillary to hearing (*R. v. Bolton*, 2 D. & L. 510); clause excusing *certiorari* held not to apply to offences to which the Act is merely extended (*R. v. Rogers*, 5 B. & Ald. 773); "such materials" refer to article and the place where found (*R. v. Wilcox*, 7 Q. B. 317; 14 L. J. M. C. 104); "if materials shall be found," implies a search-warrant necessary (*Davis v. Nest*, 6 C. & P. 167); conviction need not allege knowledge of goods being purloined (*Re Boothroyd*, 15 M. & W. 1; 15 L. J. Ex. 57); stocking frames and machines, workmen hiring and refusing to return these (28 Geo. 3, c. 55); tickets of work to silk weavers, how far evidence in case of dispute (8 & 9 Vict. c. 128); payments of wages in hosiery, without any stoppages whatever (37 & 38 Vict. c. 48); stoppages for fines for absence not within the 3rd section (*Willis v. Thorpe*, L. R. 10 Q. B. 383; 44 L. J. Q. B. 137; 23 W. R. 730); frauds and abuses in woollen, linen, silk, &c., manufacture; selling, embezzling materials, &c. (6 & 7 Vict. c. 40); hosiery manufacture, how far 6 & 7 Vict. c. 40, confined thereto; no objection that price varies according to quickness of work (*Seddon v. Cocker*, 25 J. P. 196); frauds as to coal in London (1 & 2 Will. 4, c. lxxvi.; 1 & 2 Vict. c. ci., s. 47); a penalty for not delivery of ticket, &c., held the omission not actionable (*Meredith v. Holman*, 16 M. & W. 798; 16 L. J. Ex. 126); if aggregate penalties exceed 25*l.*, action lies (*Collins v. Hopwood*, 15 M. & W. 459; 16 L. J. Ex. 124); whether coals include coal-dust as patent fuel (*London v. Parkinson*, 10 C. B. 238); of non-delivery of ticket, no action for price of coals (*Cundell v. Dawson*, 4 C. B. 399 (17 L. J. C. P. 311; 11 Jur. 634; *Little v. Poole*, 9 B. & C. 192); "delivery of coal by craft" does not include vessel direct to purchaser (*Blandford v. Morrison*, 15 Q. B. 724; 19 L. J. Q. B. 533; 14 Jur. 1130); chimney sweepers and their servants (3 & 4 Vict. c. 85; 27 & 28 Vict. c. 37; Stat. Rev., 37 & 38 Vict. c. 96; 38 & 39 Vict. c. 90); Agricultural gangs and servants employed (30 & 31 Vict. c. 130; 36 & 37 Vict. c. 67); Children's Dangerous Performances and Offences Act, 1879 (42 & 43 Vict. c. 34).

**Embezzlement by Servants.**—Embezzlement Act (39 Geo. 3, c. 85) (rep.) arose out of case of *R. v. Bazeley*, 2

Leach, 835); embezzlement distinguished from larceny (*R. v. Gill*, 1 Dears. 289; 6 Cox, 295; 23 L. J. M. C. 50; 18 Jur. 70); embezzlement, but not larceny (*R. v. Gorbutt*, D. & B. 169; 7 Cox, 221; 26 L. J. M. C. 47; 3 Jur. (n.s.) 371); receiving from fellow-servant (*R. v. Masters*, 1 Den. 332; 3 Cox, 178; 18 L. J. M. C. 2; 12 Jur. 942); jury to determine whether clerk or servant (*R. v. Negus*, 2 C. C. R. 31; 42 L. J. M. C. 62; 28 L. T. 646; 21 W. R. 687); apprentice, though infant, included in servant (*R. v. Mellish*, R. & Ry. 80); officer of corporation not a servant within 7 & 8 Geo. 4, c. 29, s. 47 (*Williams v. Stott*, 1 Cr. & M. 689; 3 Tyr. 688; *R. v. Wellings*, 1 C. & P. 457); treasurer of friendly society not a servant (*R. v. Tyrie*, 1 C. C. R. 177; 38 L. J. M. C. 58; 19 L. T. 657; 11 Cox, 241; 17 W. R. 334); clerk of chapelry not a servant (*R. v. Burton*, 1 Mood. 237); school-master of charity not a servant (*R. v. Nettleton*, 1 Mood. 259); accountant hired by overseers held a servant (*R. v. Squire*, R. & Ry. 349; 2 Stark. 348); collector of poor rates a servant (12 & 13 Vict. c. 103, s. 15; *R. v. Carpenter*, 1 C. C. R. 29; 35 L. J. M. C. 169; 14 L. T. 572; 14 W. R. 773; 12 Jur. (n.s.) 380); secretary of money club a servant (*R. v. Tongue*, 30 L. J. M. C. 49; Bell, 289; 8 Cox, 386; 3 L. T. 415; 9 W. R. 59); under-bailiff of county court not bailiff's servant (*R. v. Glover*, L. & C. 466; 9 Cox, 500; 33 L. J. M. C. 169; 10 L. T. 582; 12 W. R. 885; 10 Jur. (n.s.) 710); clerk of illegal society not a servant (*R. v. Hunt*, 8 C. & P. 642); clerk of legal society a servant, if some rules only illegal (*R. v. Stainer*, 1 C. C. R. 230; 39 L. J. M. C. 54; 21 L. T. 758; 18 W. R. 439); carrier by contract not a servant (*R. v. Gibbs*, Dears. 445; 6 Cox, 455; 24 L. J. M. C. 62; 1 Jur. (n.s.) 118); commission agent not a servant (*R. v. Mayle*, 11 Cox, 150; *R. v. May*, 1 L. & C. 13; 8 Cox, 421; 30 L. J. M. C. 81; 3 L. T. 680; 7 Jur. (n.s.) 147); licensed drover at Smithfield not a servant (*Milligan v. Wedge*, 12 A. & E. 737; 1 Q. B. 714); district agent taking and supplying orders not a servant (*R. v. Walker*, D. & B. 606; 8 Cox, 1; 27 L. J. M. C. 207); paid by commission on orders, but not controlled as to time, held not a servant (*R. v. Bowers*, 1 C. C. R. 41; 35 L. J. M. C. 206; 14 L. T. 671; 12 Jur. (n.s.) 550; 14 W. R. 803); commission agent not to take other orders, held not a servant (*R. v. Negus*, 2 C. C. R. 34); debt collector held not a servant (*R. v. Hall*, 13 Cox, 149; 31 L. T. 883); coal commission agent not a servant (*R. v. Marshall*, 11 Cox, 490; 21 L. T. 796); though paid only

by commission, sometimes deemed a servant (*R. v. Turner*, 11 Cox, 551; 22 L. T. 278); cashier and collector held a servant (*R. v. Macdonald*, L. & C. 85; 9 Cox, 10; 31 L. J. M. C. 67; 5 L. T. 330; 10 W. R. 21; 7 Jur. (n.s.) 1127); traveller for several houses may be servant of each employer (*R. v. Carr*, R. & Ry. 198; *R. v. Tite*, 1 L. & C. 29; 8 Cox, 458; 30 L. J. M. C. 142; 4 L. T. 259; 9 W. R. 554; 7 Jur. (n.s.) 556); part owner and sharing profits may be a servant (*R. v. Hartley*, R. & Ry. 139); paid by job, and working with employer's materials, held a servant (*R. v. Hoggins*, R. & Ry. 145); agreeing to farm a glebe for share of profits, held a servant (*R. v. Wortley*, 2 Den. 333; 5 Cox, 382; 21 L. J. M. C. 44; 15 Jur. 1137); servant having several masters at one time, as a drover (*R. v. Goodbody*, 8 C. & P. 665); selling goods for several persons (*R. v. Batty*, 2 Mood. 257); a servant of four companies at a railway station (*R. v. Bayley*, D. & B. 121; 7 Cox, 179; 26 L. J. M. C. 4; 2 Jur. (n.s.) 1171); secretary of society usually a servant of trustees (*R. v. Hall*, 1 Mood. 474); agreeing to find horses and men and deliver coals and account, held a servant (*R. v. Beaumont*, Dears. 270; 6 Cox, 269; 23 L. J. M. C. 54; 18 Jur. 159); servant of agent to railway to deliver goods (*R. v. Thorpe*, D. & B. 62; 8 Cox, 29; 27 L. J. M. C. 264; 4 Jur. (n.s.) 466); assisting one's father, who was clerk of board, treated as father's clerk (*R. v. Foulkes*, 2 C. C. R. 150; 44 L. J. M. C. 65; 32 L. T. 407; 23 W. R. 696); driver sent out with job horses remains servant of jobber (*Quarman v. Burnett*, 6 M. & W. 499); employed by inspector of prisons, treated as servant of Crown (*R. v. Graham*, 13 Cox, 57; 32 L. T. 38; 23 W. R. 326); servant acting beyond scope of authority not a servant using master's barge (*R. v. Cullum*, 2 C. C. R. 28; 42 L. J. M. C. 64; 28 L. T. 571; 21 W. R. 687); gamekeeper without authority selling rabbits, held not embezzlement (*R. v. Read*, 3 Q. B. D. 131; 47 L. J. M. C. 50; 37 L. T. 722; 26 W. R. 283; 14 Cox, 17); clerk getting friend to cash master's cheque, held a servant (*R. v. Gale*, 2 Q. B. D. 141; 46 L. J. M. C. 134; 35 L. T. 526; 13 Cox, 340); servant debiting himself in account (*R. v. Lister*, D. & B. 118; 26 L. J. M. C. 26; 2 Jur. (n.s.) 1124); assistant overseer, held embezzlement (*R. v. Guelder*, 30 L. J. M. C. 34; Bell, 284; 8 Cox, 372; 3 L. T. 337; 6 Jur. (n.s.) 1214); absconding with money, some evidence of attempt to embezzle (*R. v. Williams*, 7 C. & P. 331); justifying account under claim of right, held

no embezzlement (*R. v. Norman*, Car. & M. 501); date of embezzlement is the not accounting (*R. v. Taylor*, 2 Leach, 974; 3 B. & P. 596); spending master's money at another place is offence at that place (*R. v. Murdoch*, 2 Den. 298; 5 Cox, 360; 21 L. J. M. C. 22; 16 Jur. 19); letter received denying receipt of master's money, held offence in either place (*R. v. Rogers*, 3 Q. B. D. 28; 47 L. J. M. C. 11; 37 L. T. 473; 26 W. R. 61; 14 Cox, 22); time of false entry is date of embezzlement (*R. v. Hall*, R. & Ry. 163); clerk making false entry some evidence of embezzlement (*Re Windsor*, 34 L. J. M. C. 163; 6 B. & S. 522; 10 Cox, 118; 12 L. T. 307; 13 W. R. 653); denying receipt to wife of master, held evidence of embezzlement (*R. v. Wortley*, 21 L. J. M. C. 44; 2 Den. 333; 5 Cox, 382; 15 Jur. 1137); mere omission to make entry no such evidence without denying receipt (*R. v. Jones*, 7 C. & P. 833); rendering true account, then absconding without payment, no embezzlement (*R. v. Creed*, 1 Car. & K. 63); if under claim of right, no embezzlement (*R. v. Norman*, Car. & M. 501); embezzling cheque no proof of embezzling the money (*R. v. Keena*, 1 C. C. R. 113; 37 L. J. M. C. 43; 17 L. T. 515; 16 W. R. 375; 11 Cox, 123); in account a specific sum must be shown as embezzled (*R. v. Jones*, 8 C. & P. 288; *R. v. Wolstenholme*, 11 Cox, 313); mere discrepancy in entries not sufficient proof of embezzlement (*R. v. Chapman*, 1 C. & K. 119); if small sums embezzled in weekly account, weekly aggregate may be charged (*R. v. Balls*, 1 C. C. R. 328; 40 L. J. M. C. 148; 24 L. T. 760; 19 W. R. 876; 12 Cox, 96); particulars of embezzlement ordered by judge (*R. v. Bootyman*, 5 C. & P. 300; *R. v. Hodgson*, 3 C. & P. 422); servant representing more work done so as to get more money, held false pretences (*R. v. Holloway*, 1 Den. 370; 2 C. & K. 944; 18 L. J. M. C. 60; 13 Jur. 86); removing master's goods to another part of premises to get payment, held not larceny (*R. v. Poole*, D. & B. 345; 27 L. J. M. C. 53; 7 Cox, 373; 3 Jur. (n.s.) 1268); getting larger sum from cashier to pay men, held false pretences, not larceny (*R. v. Thompson*, L. & C. 233; 32 L. J. M. C. 57; 9 Cox, 222; 7 L. T. 393; 11 W. R. 41); if on parting with money prosecutor knew the falsehood, not false pretences (*R. v. Mills*, 1 D. & B. 205; 26 L. J. M. C. 79; 7 Cox, 263; 3 Jur. (n.s.) 447); as to bailiff, held false pretences, not larceny (*R. v. Green*, Dears. 323; 6 Cox, 296; 18 Jur. 158); clerk altering sums to increase amount claimed, held not false



pretences of existing fact (*R. v. Oates*, Dears. 459; 6 Cox, 540; 24 L. J. M. C. 123; 1 Jur. (n.s.) 429); servant sent to pay dues and keeping balance, held larceny (*R. v. Goode*, Car. & M. 582, 595); ringing the changes, held larceny (*R. v. Johnson*, 2 Den. 310; 21 L. J. M. C. 32; 5 Cox, 372; 15 Jur. 1113); place of trial of embezzlement is at place where letter received which denies receipt (*R. v. Rogers*, 47 L. J. M. C. 10; 3 Q. B. D. 28; 37 L. T. 473; 14 Cox, 22; 26 W. R. 61); commercial traveller to account at G. not going to G., held no evidence of embezzlement (*R. v. Treadgold*, 48 L. J. M. C. 102; 39 L. T. 291); Falsification of accounts by servant (38 & 39 Vict. c. 24).

**Post Office Servants.**—Opening post letters a misdemeanor (1 Vict. c. 36, s. 25); throwing unopened letter down a water-closet, held a secreting (*R. v. Wynn*, 2 C. & K. 859; 1 Den. 365; 3 Cox, 269; 18 L. J. M. C. 51; 13 Jur. 107); putting letter in pocket unopened, held secreting (*R. v. Poynton*, 32 L. J. M. C. 29; L. & C. 247; 9 Cox, 249; 7 L. T. 434; 11 W. R. 73; 8 Jur. (n.s.) 1218); assisting at sorting, held “being employed” (*R. v. Reason*, Dears. 226; 23 L. J. M. C. 11; 6 Cox, 237; 17 Jur. 1014); post letter means actually posted and addressed to real person (*R. v. Gardner*, 1 C. & K. 628); if actually posted though fictitious address, held larceny (*R. v. Young*, 2 C. & K. 466; 1 Den. 194); letter put into box with penny, held a letter containing money (*R. v. Mence*, Car. & M. 234); unsealed letter, held a post letter (*R. v. Bickerstaff*, 2 C. & K. 761); notes sent by postman, but not in course of duty (*R. v. Glass*, 2 C. & K. 395; 1 Den. 215); letter left on table at inn with servant to be put in box, held not a letter (*R. v. Harley*, 1 C. & K. 89).

**Larceny by Servant.**—Servant taking hay from stable, and putting into cart, held a taking (*R. v. Gruncell*, 9 C. & P. 367); servant making false entry in account and paid the balance, held not larceny but possibly false pretences (*R. v. Green*, Dears. 323; 6 Cox, 296; 18 Jur. 158); representing larger sum due, and getting from cashier (*R. v. Thompson*, L. & C. 233; 9 Cox, 222; 32 L. J. M. C. 57; 7 L. T. 393; 11 W. R. 41; 8 Jur. (n.s.) 1162; *R. v. Cooke*, 1 C. C. R. 295); servant conniving with master jointly indictable for larceny (*R. v. Hornby*, 1 C. & K. 305); if servant has general authority to part with goods, held no larceny though fraud used (*R. v. Jackson*, 1 Mood. 119); *R. v. Longstreeth*, 1 Mood.

137); carter taking master's cart and selling his coals (*R. v. Reid*, Dears. 257; 23 L. J. M. C. 25; 18 Jur. 67); drover of sheep selling some, assumed to be servant (*R. v. MacNamee*, 1 Mood. 368); drover not a servant but a bailee (*R. v. Hey*, 1 Den. 602; 3 Cox, 582; 14 Jur. 154; 2 C. & K. 983); foreman sent to post a bill and cashing it (*R. v. Paradine*, 2 East, P. C. 565); porter sent to deliver parcel and selling it (*R. v. Bass*, 1 Leach, 251, 523); servant with money to pay bill keeping it, held larceny (*R. v. Lavender*, 2 East, P. C. 566); sent to deliver cheque and keeping it, held larceny (*R. v. Heath*, 2 Mood. 33); servant sent to get change, larceny (*R. v. Atkinson*, 1 Leach, 302); sent with barge and money to pay tonnage fees, larceny if the money kept (*R. v. Goode*, Car. & M. 582; *R. v. Beaman*, Car. & M. 595); clerk who pays workmen getting from cashier a larger sum, larceny (*R. v. Cooke*, 1 C. C. R. 295); clerk discounting bill of his master not within his authority, held larceny (*R. v. Chipchase*, 2 Leach, 699); clerk sent to get pass-book and cheques and destroying one, held larceny (*R. v. Watts*, 2 Den. 14; 4 Cox, 336; 19 L. J. M. C. 193; 14 Jur. 870; *R. v. Murray*, 1 Mood. 276); receiving from fellow-servant money paid for master, held embezzlement (*R. v. Masters*, 1 Den. 332; 3 Cox, 278; 2 C. & K. 930; 18 L. J. M. C. 2; 12 Jur. 942); servant sent for oats and appropriating same, held larceny (*R. v. Spears*, 2 Leach, 826); servant sent for corn and getting same put into sacks and selling, held larceny (*R. v. Abrahams*, 2 Leach, 824); ringing the changes, held larceny (*R. v. Johnson*, 2 Den. 310; 5 Cox, 372; 21 L. J. M. C. 32; 15 Jur. 1113); employed to bring in his own cart coal for employer and appropriating, held larceny (*R. v. Bunkall*, L. & C. 371; 9 Cox, 419; 33 L. J. M. C. 75; 9 L. T. 778; 12 W. R. 414; 10 Jur. (n.s.) 216); manager of branch bank putting bank money in safe then appropriating, held larceny (*R. v. Wright*, D. & B. 431; 7 Cox, 413; 27 L. J. M. C. 65; 4 Jur. (n.s.) 313); servant fetched home straw, then sold same, held larceny (*R. v. Hayward*, 1 C. & K. 518); clerk receiving bonds for master, but locking them in own desk, held not larceny (*R. v. Waite*, 2 East, P. C. 570); bank clerk receiving cash, but never putting it into bank drawer, not larceny (*R. v. Bull*, 2 Leach, 841); servant sent to get change and going off with it, no larceny (*R. v. Sullen*, 1 Mood. 129); debt paid to clerk for master, no authority to receive, neither larceny nor embezzlement (*R. v. Hawton*, 7 C. & P. 281);



workman sent to get wages for all and keeping some, held no larceny (*R. v. Barnes*, 1 C. C. R. 45; 35 L. J. M. C. 204; 14 L. T. 601; 14 W. R. 805; 12 Jur. (n.s.) 549); servant selling master's own goods to master, held larceny (*R. v. Hall*, 1 Den. 381; 2 C. & K. 947; 3 Cox, 245; 18 L. J. M. C. 62; 13 Jur. 87); taking bags from warehouse and placing outside, held larceny (*R. v. Manning*, Dears. 21; 5 Cox, 86; 22 L. J. M. C. 21; 17 Jur. 28); taking master's corn to feed his horses (26 & 27 Vict. c. 103); this formerly treated as larceny (*R. v. Privett*, 1 Den. 193; 2 C. & K. 114; *R. v. Handley*, Car. & M. 547).

**Servant's other Offences against Master.**—Stealing ore, coal, &c. (24 & 25 Vict. c. 96, ss. 38, 39); miner taking from one heap to add to another, held not larceny (*R. v. Webb*, 1 Mood. 431); must be shown to be stolen from the mine (*R. v. Trevenner*, 2 M. & Rob. 476); stealing in process of manufacture (24 & 25 Vict. c. 96, s. 62); if texture complete but not ready for sale, then still in process of manufacture (*R. v. Woodhead*, 1 M. & Rob. 549); maliciously destroying goods in process of manufacture, machines, &c. (24 & 25 Vict. c. 97, s. 14); plugging up pipe of engine held to be rendering useless (*R. v. Fisher*, 1 C. C. R. 7); taking away part of machine so as not to be workable, held damaging (*R. v. Tacey*, R. & Ry. 452); destroying part of threshing machine while lying in pieces, held a destroying the machine (*R. v. Mackerell*, 4 C. & P. 448); taking away the side boards held to be destroying, but not so if owner had removed part and left residue (*R. v. Bartlett*, 2 Deac. Cr. L. 1517); servant opening inner door of house for purpose of rape, held burglary (*R. v. Gray*, 1 Str. 481); servant assisting burglar to enter, held burglary in both (*Cornwall's Case*, 2 Str. 881); servant pretending to join burglars and admitting them, held no burglary (*R. v. Johnson*, Car. & M. 218); servant bursting open a door in the night to steal, but not stealing, held not the offence (*R. v. Wenmonth*, 8 Cox C. 348); servant negligently setting fire to master's house (14 Geo. 3, c. 78, s. 84; 28 & 29 Vict. c. 90, s. 34); this statutory offence held to be general law (*Richards v. Easto*, 15 M. & W. 251; 15 L. J. Ex. 163); not confined to a limited area (*Filliter v. Phippard*, 11 Q. B. 354; 17 L. J. Q. B. 89); only applies to insurance moneys on houses and buildings (*Ex parte Gorley*, 34 L. J. Bk. 1; 4 De G. J. & S. 477; 11 L. T. 319; 13 W. R. 60).

## CHAPTER V.

### STATUTORY REMEDIES BETWEEN MASTER AND SERVANT.

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**Arbitration of Disputes.**—Between masters and men (5 Geo. 4, c. 96; 1 Vict. c. 67; 30 & 31 Vict. c. 105; 35 & 36 Vict. c. 46); if in 5 Geo. 4, c. 96, s. 3, words “shall be lawful,” &c., are discretionary or imperative, and if arbitration excludes right to sue (*Crisp v. Bunbury*, 8 Bing. 394; 1 M. & Sc. 646; *Julius v. Oxford*, 5 App. C. 214; 49 L. J. Q. B. 577; 42 L. T. 546; 28 W. R. 726; 44 J. P. 600); arbitration proceedings settled as to particular trade not deemed imported into all the agreements (*Levey v. Hill*, 3 H. & N. 702; 27 L. J. Ex. 259; 4 Jur. (n.s.) 589).

**Trade Union Acts, 1871, 1876** (34 & 35 Vict. c. 31; 39 & 40 Vict. c. 22).—At common law how far cheating or defrauding affects public (*R. v. Wheatley*, 2 Burr. 1125; 1 W. Bl. 273); combination to ruin a trader indictable though means not specified (*R. v. Eccles*, Willes, 583; 1 Leach, 276); conspiring to pervert justice by producing false evidence (*R. v. Mawbey*, 6 T. R. 636); masters combining not to employ men without other masters consenting, bond illegal (*Hilton v. Eckersley*, 6 E. & B. 47; 25 L. J. Q. B. 199; 2 Jur. (n.s.) 587); threat of all the men to give notice simultaneously if A. is employed, held an offence (*Walsby v. Anley*, 3 E. & E. 516; 30 L. J. M. C. 121; 3 L. T. 666; 9 W. R. 271; 7 Jur. (n.s.) 465); simultaneously quitting service so as to injure master’s business of gas supply (*R. v. Bunn*, 12 Cox, 316); picketing as an offence (*R. v. Bauld*, 13 Cox, 282); stationing pickets to make insulting gestures,

held molestation (*R. v. Druitt*, 10 Cox, 593; 16 L. T. 855); injunction against issuing placards threatening workmen (*Springhead v. Riley*, 6 Eq. 551; 37 L. J. Ch. 889; 19 L. T. 64; 16 W. R. 1138); trade union rule as a restraint of trade (*Hilton v. Eckersley*, 6 E. & B. 47; 25 L. J. Q. B. 199; 26 L. T. 314); if rule in restraint of trade, held not a friendly society (*Hornby v. Close*, L. R. 2 Q. B. 153; 8 B. & S. 175; 36 L. J. M. C. 43; 10 Cox, 393; 15 L. T. 563; 15 W. R. 336; *Farrer v. Close*, L. R. 4 Q. B. 602; 10 B. & S. 553; 38 L. J. M. C. 132; 20 L. T. 802; 17 W. R. 1129); society for lawful purposes having some rules in restraint of trade may prosecute servant for embezzling (*R. v. Stainer*, 1 C. C. R. 230; 39 L. J. M. C. 54; 21 L. T. 758; 18 W. R. 439).

34 & 35 Vict. c. 31, s. 4.—Application of funds of trade union, how far resolution of society as to non-union man construed as a threat (*Wood v. Bowron*, L. R. 2 Q. B. 21; 7 B. & S. 931; 36 L. J. M. C. 5; 15 L. T. 207; 10 Cox, 344; 15 W. R. 58); court restraining from amalgamating with trade union (*Wolfe v. Matthews*, 21 Ch. D. 194; 30 W. R. 839; 51 L. J. Ch. 833; 47 L. T. 158); action not maintainable where some rules in restraint of trade (*Duke v. Littleboy*, 49 L. J. Ch. 802; 43 L. T. 216; 28 W. R. 977); expelled member not entitled to action where some of rules provide benefit to trade union (*Rigby v. Connol*, 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650).

**What is a Threat.**—Mere persuasion not to work not indictable under 6 Geo. 4, c. 129, s. 3, as conspiracy (*R. v. Shepherd*, 11 Cox, 325); conspiracy to induce workmen to leave, indictable without threats, and a molesting (*R. v. Duffield*, 5 Cox, 404); preventing servant obtaining work when steam machinery used, an indictable conspiracy (*R. v. Hewitt*, 5 Cox, 162); combining to dictate what servants shall be employed, indictable (*R. v. Bykerdyke*, 1 M. & Rob. 179); threat to leave unless a workman discharged, held illegal; using influence “to leave club or be despised” (*O'Neill v. Longman*, 4 B. & S. 376; 9 Cox, 360; 8 L. T. 657; 11 W. R. 947); refusing to work unless A. discharged, punishable as a threat (*Shelburne v. Oliver*, 13 L. T. 630); threat to men to leave, unless A. become member of union (*Skinner v. Kitch*, L. R. 2 Q. B. 393; 36 L. J. M. C. 116; 16 L. T. 413; 15 W. R. 830; 10 Cox, 493); conviction for threat to force workman to leave, held valid (*Ex parte Perham*, 5

H. & N. 30; 2 E. & E. 383; 29 L. J. M. C. 31, 33; 5 Jur. (N.S.) 1212; workmen on strike collecting subscriptions from house to house, held not idle and disorderly persons begging (*Pointon v. Hill*, 12 Q. B. D. 306; 53 L. J. M. C. 62; 50 L. T. 208; 32 W. R. 478; 48 J. P. 341; 15 Cox, 461).

34 & 35 Vict. c. 31, s. 13.—Registration of trade union of similar name, split of society (*R. v. Registrar*, L. R. 7 Q. B. 941; 41 L. J. Q. B. 336; 27 L. T. 229).

**Conspiracy and Protection of Property Act, 1875** (38 & 39 Vict. c. 86).—38 & 39 Vict. c. 86, s. 7; intimidation and molesting by stationing pickets (*R. v. Druitt*, 10 Cox, 592; 16 L. T. 855; *R. v. Hibbert*, 13 Cox, 82); following another in disorderly manner, as pickets (*R. v. Bauld*, 13 Cox, 283); telling master he must not employ a non-unionist, held intimidation (*Shelbourne v. Oliver*, 30 J. P. 213); telling non-unionist that if he leave quietly we shall not hurt you, held a threat (*Hodgson v. Graveling*, 31 J. P. 115); serving copy of men's resolution as to number of apprentices to be kept, held not a threat (*Wood v. Bowron*, L. R. 2 Q. B. 21; 36 L. J. M. C. 5; 7 B. & S. 931; 31 J. P. 21; 15 L. T. 207; 15 W. R. 58); secretary making claim for men's wages and stating they would leave, held no threat (*O'Hare v. Craggs*, 31 J. P. 39); threat that all would leave unless master discharged some men, held an offence before 34 & 35 Vict. c. 31 (*Walsby v. Anley*, 25 J. P. 499; 30 L. J. M. C. 121; 7 Jur. (N.S.) 465; 3 L. T. 666; 9 W. R. 271; 3 E. & E. 516); held mere discussion about a dispute not intimidation (*O'Neill v. Kruger*, 4 B. & S. 389; 32 L. J. M. C. 259; 8 L. T. 657; 27 J. P. 726; 12 W. R. 47; *O'Neill v. Longman*, 4 B. & S. 376; 32 L. J. M. C. 259); secretary notifying that men would strike unless one would become a member, held an offence (*Skinner v. Kitch*, L. R. 2 Q. B. 393; 36 L. J. M. C. 116; 16 L. T. 413; 15 W. R. 830; 10 Cox, 493).

**Employers and Workmen Act, 1875** (38 & 39 Vict. c. 90).—Rules 29th August, 1877; as to seamen (43 & 44 Vict. c. 16, s. 11); an infant expressly authorized to sue for wages in county courts (9 & 10 Vict. c. 95, s. 64; 13 & 14 Vict. c. 61, s. 1).

38 & 39 Vict. c. 90, s. 3).—Dispute includes claim for damages by leaving (*Clemson v. Hubbard*, 1 Ex. D. 179; 45 L. J. M. C. 69; 33 L. T. 816; 40 J. P. 725; 24 W. R.

312); potter's printer held a workman, and claim for breach by transferrors, held a dispute (*Grainger v. Aynsley*; *Bromley v. Tams*, 6 Q. B. D. 182; 50 L. J. M. C. 51; 29 W. R. 242; 45 J. P. 142); master claiming against infant, competent if beneficial contract (*Leslie v. Fitzpatrick*, 3 Q. B. D. 229; 47 L. J. M. C. 22; 37 L. T. 446; 41 J. P. 822); under former Acts word "penalty" held not to include a sum ordered to be paid (*Wiles v. Cooper*, 6 N. & M. 276; 3 A. & E. 524); judgment of county court held *res judicata* in justice's court (*Routledge v. Hislop*, 2 E. & B. 549; 29 L. J. M. C. 90; 32 J. P. 705; 8 W. R. 363; 6 Jur. (N.S.) 398); adjudication of justices held *res judicata* in county court (*Millett v. Coleman*, 44 L. J. Q. B. 194; 33 L. T. 204; 39 J. P. 805); claim of wages in lieu of notice recovered in county court, no estoppel of claim before justices for damaging materials (*Hindley v. Haslam*, 3 Q. B. D. 481; 27 W. R. 61); claim for wages reducible by proof of bad work (*Sharp v. Hainsworth*, 3 B. & S. 139; 32 L. J. M. C. 33; 7 L. T. 320; 11 W. R. 36; 9 Jur. (N.S.) 353); wages due, but unpaid, may be ordered to be abated (*R. v. Biggins*, 5 L. T. 605); court rescinding contract, agreement to reference a bar to adjudication (*London v. Bailey*, 3 Q. B. D. 127; 47 L. J. M. C. 3; 37 L. T. 499; 26 W. R. 494).

*Recovery of wages* under 38 & 39 Vict. c. 90, s. 4.—Justices may abate claim for badness of work (*Sharp v. Hainsworth*, 3 B. & S. 139; 32 L. J. M. C. 33; 7 L. T. 320; 11 W. R. 36); damages for dismissal confined to actual pecuniary loss, and if the latter paid into court, sufficient (*Walton v. Tucker*, 45 J. P. 23); employer bound to find work for tinplate worker hired for twelve months, and to serve no one else (*R. v. Welch*, 22 L. J. M. C. 145; 2 E. & B. 357); if suing for wages on continuing contract, no second action can lie for dismissal (*Barnsley v. Taylor*, 37 L. J. Q. B. 39; 32 J. P. 229).

38 & 39 Vict. c. 90, s. 9.—Order to fulfil contract is no estoppel of later claim for breach (*Cutler v. Turner*, L. R. 9 Q. B. 502; 43 L. J. M. C. 124; 30 L. T. 706; 22 W. R. 840); committal may be for each successive instalment ordered (*Evans v. Wills*, 1 C. P. D. 229; 45 L. J. C. P. 420; 24 W. R. 883; 40 J. P. 552; 34 L. T. 679).

38 & 39 Vict. c. 90, s. 10.—Journeyman tailor paid per garment held an artificer (*Ex parte Gordon*, 25 L. J. M. C. 12; 1 Jur. (N.S.) 683; 3 W. R. 568); one biscuit workman paying another workman's wages, held the



latter a workman of same master (*Willett v. Boote*, 6 H. & N. 26; 30 L. J. M. C. 6; 3 L. T. 276); artizans in shipbuilding employing others to assist, held workmen (*Lawrence v. Todd*, 14 C. B. (N.S.) 554; 32 L. J. M. C. 238; 8 L. T. 505; 11 W. R. 835; 10 Jur. (N.S.) 179); one workman finisher of Italian goods directing others held workman (*Whiteley v. Armitage*, 13 W. R. 144); contract to dig well, payment per foot, held a labourer (*Lowther v. Radnor*, 8 East, 113); man in possession held not a labourer (*Bramwell v. Pennick*, 7 B. & C. 536); dairymaid a servant in husbandry (*Ex parte Hughes*, 23 L. J. M. C. 138; 18 Jur. 447); fireman working by the piece in raising coal an artificer (*Pillar v. Llynvi*, L. R. 4 C. P. 752; 38 L. J. C. P. 294; 20 L. T. 923; 17 W. R. 1123); skilled workman held an artificer (*Lawrence v. Todd*, 14 C. B. (N.S.) 554; 32 L. J. M. C. 238; 8 L. T. 505; 10 Jur. (N.S.) 179; 11 W. R. 835); designer of patterns in calico printing held an artificer (*Ex parte Ormerod*, 1 D. & L. 825; 13 L. J. M. C. 73; 8 Jur. 495); mechanic to design new inventions in lace manufacture held an artificer or workman (*Jackson v. Hill*, 48 J. P. 7); former distinction between verbal and written contract (*Banks v. Crossland*, L. R. 10 Q. B. 97; 44 L. J. M. C. 8; 32 L. T. 226; 23 W. R. 414; 39 J. P. 296); married woman's contract to serve formerly not enforceable (*Tomkinson v. West*, 32 L. T. 462); manual labour the main test of a workman (*Grainger v. Aynsley*, 6 Q. B. D. 182; 29 W. R. 242; 45 J. P. 142; 50 L. J. M. C. 48; 43 L. T. 608); contract to serve as collier, payment per ton, held a personal service (*Re Bailey*, 3 E. & B. 607; 23 L. J. M. C. 161; 18 Jur. 930); contract to weave silk, held not a servant (*Hardy v. Ryle*, 9 B. & C. 603; 4 M. & Ry. 295); contract to build a wall in a certain time held not workman (*Lancaster v. Greaves*, 9 B. & C. 628); contract to print cotton goods not a servant (*Ex parte Johnson*, 7 Dowl. 702; 3 Jur. 481); farm bailiff not a servant in husbandry (*Davies v. Berwick*, 3 E. & E. 549; 30 L. J. M. C. 84; 3 L. T. 697; 9 W. R. 334; 7 Jur. (N.S.) 410); no definite term of hiring needed to give justices jurisdiction (*Taylor v. Carr*, 2 B. & S. 335; 31 L. J. M. C. 111); how to obtain *habeas corpus* to discharge prisoner without appearing personally in court (*Ex parte Cross*, 2 H. & N. 354; 26 L. J. M. C. 201; *Ex parte Jacklin*, 2 D. & L. 103; 13 L. J. M. C. 139; 8 Jur. 576; *Ex parte Geswood*, 2 E. & B. 952; 23 L. J. M. C. 35; 17 Jur. 1163); substituting good com-

mitment before return to writ (*R. v. Richards*, 5 Q. B. 926; 13 L. J. M. C. 147; 8 Jur. 752; *Ex parte Smith*, 27 L. J. M. C. 186); if affidavit show jurisdiction, prisoner will be remanded (*Re Bailey*, 3 E. & B. 607; 23 L. J. M. C. 161; 18 Jur. 930).

38 & 39 Viet. c. 90, s. 11.—Forfeiture of wages, payment by piece, weekly hiring (*Walsh v. Whalley*, L. R. 9 Q. B. 367; 43 L. J. Q. B. 102; 38 J. P. 470; 22 W. R. 571); deductions of fines from wages in hosiery not within 37 & 38 Viet. c. 48, s. 3 (*Willis v. Thorp*, L. R. 10 Q. B. 383; 44 L. J. Q. B. 137); hired by week, payment per hour, leaving before end of week (*Saunders v. Whittle*, 33 L. T. 816; 24 W. R. 406; 40 J. P. 136); seaman left on foreign shore entitled to wages up to date (*Button v. Thompson*, L. R. 4 Q. B. 367; 38 L. J. C. P. 225); factory winder paid each Saturday for week ending Wednesday, held accruing wages forfeitable (*Gregson v. Watson*, 34 L. T. 143; 40 J. P. 312); factory female weaver paid by piece on Saturdays for week up to Wednesday previous, entitled to wages, though leaving without notice (*Warburton v. Heyworth*, 6 Q. B. D. 1; 50 L. J. Q. B. 137; 29 W. R. 91; 43 L. T. 461; 45 J. P. 38); working by piece, and no agreement as to term of service or forfeiture, held entitled to wages actually earned (*Margerison v. Birtwhistle*, 36 J. P. 100); general notice by several workmen to leave at one time not valid unless authority of each proved (*Smart v. Pessol*, 30 L. T. 632; 38 J. P. 357); leaving without notice forfeits current term's wages (*Lilly v. Elwin*, 11 Q. B. 742; 17 L. J. Q. B. 132; 12 J. P. 343; 12 Jur. 623); dismissal during week of weekly hiring, no wages due (*Robins v. Wrench*, 31 J. P. 758); dismissal of traveller without notice for neglecting to remit moneys (*Blencarn v. Hodge*, 16 L. T. 608); wages by piece fixed each Thursday, and paid each Saturday, leaving on Friday forfeits previous and current week's wages (*Walsh v. Walley*, 38 J. P. 470; 22 W. R. 367; L. R. 9 Q. B. 367; 43 L. J. Q. B. 102); servant hired for year dismissed for misconduct, not entitled to any wages (*Turner v. Robinson*, 5 B. & Ad. 789; 6 C. & P. 15; 2 N. & M. 829); though master recovered cross-damages, servant dismissed during term entitled to no wages (*Ridgway v. Hungerford*, 3 A. & E. 171; 4 N. & M. 797); painter hired by the week, and paid by the hour, not entitled to wages of current week (*Saunders v. Whittle*, 40 J. P. 136; 33 L. T. 816; 24 W. R. 406); rules allowing limited

absence, and workman absent a longer time, no forfeiture of wages (*Taylor v. Carr*, 30 L. J. M. C. 201; 4 L. T. 414; 9 W. R. 699); workman's hiring, how determined; absence of biscuit baker from illness for five weeks held no determination of contract (*Carr v. Hadrill*, 39 J. P. 246); illness caused by servant's own misconduct no determination of contract (*R. v. Raschen*, 38 L. T. 38; 42 J. P. 264); if illness a pretext or wilful, master not bound to pay wages. (*Cuckson v. Stone*, 1 E. & B. 248; 28 L. J. Q. B. 25; 7 W. R. 134; 5 Jur. (n.s.) 337); weekly wages imply weekly hiring and a week's notice to leave, custom for master to dismiss without notice inadmissible (*Peters v. Stavelly*, 15 L. T. 275; 31 J. P. 40).

**Infants under Employers and Workmen Act.**—If wages of infant workman fair, contract is beneficial and binding (*Leslie v. Fitzpatrick*, 3 Q. B. D. 229; 47 L. J. M. C. 22; 41 J. P. 822; 37 L. T. 446); master not to be liable to pay wages if a turn-out, held void deed (*Meakin v. Morris*, 12 Q. B. D. 352; 53 L. J. M. C. 72; 32 W. R. 661; 48 J. P. 344); Employer and Workmen Act, 1875 (38 & 39 Vict. c. 90), does not take away infant's power to avoid contract at 21 (*Moore v. Smith*, 39 J. P. 772); ratification after age under 37 & 38 Vict. c. 62, does not enable action to be brought on infant's contract (*Coxhead v. Mullis*, 3 C. P. D. 439; 27 W. R. 136; 42 J. P. 808); whether ratification after 21 will support action on new contract (*Northcote v. Doughty*, 4 C. P. D. 385); contract with infant workmen binding if beneficial (38 & 39 Vict. c. 90, s. 10); if power of master to stop work and wages, then void as to infant workman (*R. v. Lord*, 12 Q. B. 757; 17 L. J. M. C. 181; 12 Jur. 1001); infant's hiring may be partly in writing and partly by word of mouth; postponing infant's wages in an event not objectionable (*Walls v. Scott*, 25 J. P. 215).

*What apprentices within Employers and Workmen Act* (38 & 39 Vict. c. 90, s. 12).—Extended to sea apprentices (43 & 44 Vict. c. 16, s. 11); apprentice not bound to follow master to another town at unreasonable distance (*Eaton v. Western*, 9 Q. B. D. 636; 52 L. J. Q. B. 41; 47 L. T. 192; 47 J. P. 196; *Royce v. Charlton*, 8 Q. B. D. 1; 30 W. R. 274; 45 L. T. 712; 46 J. P. 197); if master discontinue one of three trades, apprentice indenture not enforceable by him (*Ellen v. Topp*, 6 Ex. 424; 20 L. J. Ex. 241; 15 Jur. 451); if partnership dissolved, apprentice indenture not

enforceable (*Lloyd v. Blackburn*, 9 M. & W. 363; 11 L. J. Ex. 210; 1 Dowl. (N.S.) 647); if one partner die, the other cannot enforce apprenticeship indenture (*Brooke v. Dawson*, 33 J. P. 356); if apprentice bound to A. and executors, contract continues after A.'s death (*Cooper v. Simons*, 7 H. & N. 707; 31 L. J. M. C. 138; 5 L. T. 712; 10 W. R. 270; 8 Jur. (N.S.) 81); apprenticeship determined by death of either, unless contrary stipulation (*Farrow v. Wilson*, 20 L. T. 810; 18 W. R. 43; L. R. 4 C. P. 744; 38 L. J. C. P. 326); determination by death does not take away right of action already vested (*Stubbs v. Holywell*, L. R. 2 Ex. 311; 36 L. J. Ex. 166; 16 L. T. 631; 15 W. R. 869); if firm dissolved, apprentice may sue each for breach (*Couchman v. Sillar*, 22 L. T. 480; 18 W. R. 757); right of apprentice at 21 to disaffirm contract (*Ex parte Davis*, 5 T. R. 715); disaffirmance too late 18 months after 21 (*Wray v. West*, 15 L. T. 180; 30 J. P. 726); justices may after expiration order apprentice to make up for absences (*Gray v. Cookson*, 16 East, 13); if disaffirmance affected by Employers and Workmen Act (*Moore v. Smith*, 39 J. P. 772); if infant since 37 & 38 Vict. c. 62, s. 2, can ratify at 21 the apprenticeship deed (*Coxhead v. Mullis*, 3 C. P. D. 439; 27 W. R. 136; 42 J. P. 808; 39 L. T. 349); if new contract after 21 can be inferred (*Ditcham v. Worrell*, 5 C. P. D. 410; 49 L. J. C. P. 688; 29 W. R. 59; 43 L. T. 286; 44 J. P. 799); apprentice not dismissable for misconduct unless a proviso in deed (*Phillips v. Clift*, 4 H. & N. 168; 5 Jur. (N.S.) 74; 28 L. J. Ex. 153; 23 J. P. 120); express covenant to obey implies right of master to dismiss for disobedience (*Westwick v. Theodor*, L. R. 10 Q. B. 224; 44 L. J. Q. B. 110; 32 L. T. 696; 23 W. R. 620); if dismissable for habitual thieving (*Cox v. Mathew*, 2 F. & F. 397); apprentice's absence, unless from permanent illness, no breach (*Boast v. Firth*, L. R. 4 C. P. 1; 38 L. J. C. P. 1; 19 L. T. 264; 17 W. R. 29); wages recoverable during apprentice's illness though caused by misconduct (*R. v. Raschen*, 38 L. T. 28; 42 J. P. 264); master bound to provide medical attendance for apprentice (*R. v. Smith*, 8 C. & P. 153); dispute about wages no excuse for apprentice absenting himself, being independent covenants (*Winifrith v. Pankhurst*, 28 J. P. 823); apprehension of bodily harm a good ground for absence (*Hallivell v. Counsell*, 38 L. T. 176); High Court has no jurisdiction independent of statute to cancel apprenticeship (*Webb v. England*, 29 Beav. 44; 30 L. J. Ch. 222; 7 Jur. (N.S.) 153; 3 L. T. 574; 9 W. R.

183); justices may order wages to be paid after determination of apprenticeship (*R. v. Proud*, 31 J. P. 357; 1 C. C. R. 71; 36 L. J. M. C. 62; 16 L. T. 364; 15 W. R. 796; 10 Cox, 455).

**Married Women under Employers and Workmen Act.**—Married woman as servant, held implied power to contract (45 & 46 Vict. c. 75); no deduction from wages of factory woman for absence (38 & 39 Vict. c. 90, s. 11); factory woman not recovering current week's wages (*Gregson v. Watson*, 34 L. T. 143; 40 J. P. 312); she may recover wages for piece-work up to leaving (*Warburton v. Heyworth*, 6 Q. B. D. 1; 50 L. J. Q. B. 137; 43 L. T. 461; 29 W. R. 91; 45 J. P. 38).

**Validity of Contract under Employers and Workmen Act.**—Statute of Frauds requiring writing of contract to serve more than a year (29 Ch. 2, c. 3); contract to serve a year beginning next day is not for more than a year (*Banks v. Crossland*, L. R. 10 Q. B. 97; 44 L. J. M. C. 8; 32 L. T. 226; 23 W. R. 414); part performance of contract of service not taking contract out of Statute of Frauds (*Britain v. Rossiter*, 11 Q. B. D. 123; 48 L. J. Ex. 362; 40 L. T. 240; 27 W. R. 482; 43 J. P. 332); contract to serve three years and on leaving not to carry on same trade, held within Statute of Frauds (*Davey v. Shannon*, 4 Ex. D. 81; 48 L. J. Ex. 459; 40 L. T. 628; 27 W. R. 599; 43 J. P. 368); if service under verbal contract for above a year is entered on, a new contract presumable and enforceable (*Cawthorne v. Cordrey*, 13 C. B. (n.s.) 406; 32 L. J. M. C. 152); contract may be partly written and partly oral (*Walls v. Scott*, 25 J. P. 215); printed rules posted in factory and referred to, held part of contract (*Walsh v. Walley*, L. R. 9 Q. B. 367; 43 L. J. Q. B. 102; 22 W. R. 571; 38 J. P. 470); justices may presume that notice stuck up in factory is part of hiring (*Rideout v. Jenkinson*, 38 J. P. 424); proof that workman able to read necessary if printed notice relied on (*Carus v. Eastwood*, 32 L. T. 855; 40 J. P. 103).

**Compensation for Death of Workman caused by Negligence.**—Lord Campbell's Act (9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95).—Illegitimate child cannot sue (*Dickenson v. N. E. R.*, 33 L. J. Ex. 91; 2 H. & C. 735); mode of estimating damage for death of working man (*Phillips v. L. S. W.*, L. R. 5 C. P. D. 280; 42 L. T. 6; 49 L. J. C. P.



233; 44 L. T. 217); insurance money not to be deducted from damage (*Bradburn v. G. W. R.*, L. R. 10 Ex. 1; 44 L. J. Ex. 9; 31 L. T. 464; 23 W. R. 48); master suing for loss of servant, no answer that servant has already recovered damages (*Martinez v. Gerber*, 3 M. & Gr. 88; 3 Sc. N. R. 86); pecuniary loss only allowed, and not for wounded feelings (*Blake v. Midl. R.*, 18 Q. B. 93; 21 L. J. Q. B. 233; 16 Jur. 562); expectation of profit may be considered (*Dalton v. L. S. E.*, 4 C. B. (n.s.) 296; 27 L. J. C. P. 227; 4 Jur. (n.s.) 711); reasonable expectation of benefit (*Pym v. G. N. R.*, 4 B. & S. 396; 32 L. J. Q. B. 377; 8 L. T. 734; 11 W. R. 922; 10 Jur. (n.s.) 199); parent suing for compensation for death of child must prove pecuniary benefit from child's labour (*Duckworth v. Johnson*, 4 H. & N. 653; 29 L. J. Ex. 25; 5 Jur. (n.s.) 630; *Condon v. G. E. R.*, 16 Ir. C. L. 415); reasonable expectation of pecuniary benefit sufficient (*Hetherington v. N. E. R.*, 9 Q. B. D. 160; 51 L. J. Q. B. 495; 30 W. R. 797; *Sykes v. N. E. R.*, 44 L. J. C. P. 191; 32 L. T. 199; 23 W. R. 473); if servant killed on the spot master cannot sue for loss (*Osborn v. Gillett*, L. R. 8 Ex. 88; 42 L. J. Ex. 53; 28 L. T. 197; 21 W. R. 409); executors suing for medical expenses and loss of business being part of personal estate (*Bradshaw v. Lancashire*, L. R. 10 C. P. 189; 44 L. J. C. P. 148; 31 L. T. 847); husband suing for medical expenses of wife when injured (*Potter v. Metropolitan*, 32 L. T. 36).

**Employers Liability Act** (43 & 44 Vict. c. 42).—Power exists to contract out of the Act (*Griffiths v. Dudley*, 9 Q. B. D. 357; 51 L. J. Q. B. 543; 47 L. T. 10; 30 W. R. 797; 46 J. P. 711); action not removable to High Court under 19 & 20 Vict. c. 108, s. 39 (*R. v. City of London*, 14 Q. B. D. 906); as to exceptions in the Act applying beyond the five classes there stated (*Robins v. Cubitt*, 46 L. T. 535); seamen are now within the Employers Liability Act (43 & 44 Vict. c. 16, s. 11); formerly not so (*G. N. R. v. Edgehill*, 11 Q. B. D. 225); a double remedy in the High Court and in county court not allowed (*Munday v. Thames*, 10 Q. B. D. 59; 47 L. T. 351; 52 L. J. Q. B. 119); as to other kinds of contributory negligence than those specified in statute, workman's knowledge not conclusive defence (*Stuart v. Evans*, 49 L. T. 138; 31 W. R. 706).

43 & 44 Vict. c. 42, s. 1.—See cases as to workmen under Employers and Workmen Act, *ante*, p. 71); omnibus

conductor not a workman (*Morgan v. Omnibus*, 13 Q. B. D. 832; 53 L. J. Q. B. 352; 51 L. T. 213; 32 W. R. 759; 48 J. P. 503); defect in the way, something permanent (*MacGiffen v. Palmer*, 10 Q. B. D. 1; 52 L. J. Q. B. 25; 47 L. T. 346; 31 W. R. 118; 47 J. P. 70); meaning of way in mining leases not including tram plates (*Beaufort v. Bates*, De G. F. & G. 381; 31 L. J. Ch. 481); defect in condition of machinery includes unsuitability of machinery for purpose (*Heske v. Samuelson*, 12 Q. B. D. 30; 53 L. J. Q. B. 45; 49 L. T. 474); breaking of ladder supporting scaffold held a defect in condition of plant (*Cripps v. Judge*, 13 Q. B. D. 583; 53 L. J. Q. B. 517; 51 L. T. 182; 33 W. R. 35); man holding the guy rope when working a crane not superintendent (*Shufflers v. General Steam Co.*, 10 Q. B. D. 356; 52 L. J. Q. B. 260; 48 L. T. 228; 31 W. R. 656; 47 J. P. 327); foreman bricklayer assisting workman not the less a superintendent (*Osborn v. Jackson*, 11 Q. B. D. 619; 48 L. T. 642); carman and boy, not the relation of being bound to conform (*Bunker v. Midland R. Co.*, 47 L. T. 476; 31 W. R. 231); railway carman with boy to assist, boy is bound to conform (*Millward v. Midl. R.*, 14 Q. B. D. 68); capstan man moving trucks not held in charge of train (*Cox v. G. W. R.*, 9 Q. B. D. 107; 30 W. R. 816; 47 J. P. 116); pointsman of railway held not in charge of the points (*Gibbs v. G. W. R.*, 12 Q. B. D. 208; 50 L. T. 7; 53 L. J. Q. B. 513; 32 W. R. 329; 48 J. P. 230); railway includes temporary rails during the construction (*Doughty v. Ferbank*, 10 Q. B. D. 358; 52 L. J. Q. B. 480; 48 L. T. 530; 48 J. P. 55); railway includes goods station (*Cox v. G. W. R.*, 9 Q. B. D. 107, *supra*); steam crane on trolley not a locomotive engine (*Murphy v. Wilson*, 52 L. J. Q. B. 524; 47 L. T. 530; 47 J. P. 565).

43 & 44 Vict. c. 42, s. 4.—Judge to decide if reasonable excuse for no notice, a promise of compensation no excuse; notice to be in writing (*Moyle v. Jenkins*, 8 Q. B. D. 116; 46 L. T. 472; 51 L. J. Q. B. 112; 30 W. R. 324); notice referring to another document not sufficient (*Keen v. Millwall*, 8 Q. B. D. 482; 51 L. J. Q. B. 277; 46 L. T. 472; 30 W. R. 503; 46 J. P. 435); precise description of cause of action not necessary (*Stone v. Hyde*, 9 Q. B. D. 76; 51 L. J. Q. B. 452; 46 L. T. 421; 46 J. P. 788; 30 W. R. 816; *Clarkson v. Musgrave*, 9 Q. B. D. 386; 51 L. J. Q. B. 525; 31 W. R. 47).

43 & 44 Vict. c. 42, s. 7.—Omission of date held a defect and curable (*Carter v. Drysdale*, 12 Q. B. D. 91; 32 W. R.

171; 53 L. J. Q. B. 557); name and address, how far to be defined as to bill of sale (*Briggs v. Boss*, L. R. 3 Q. B. 268; 37 L. J. Q. B. 101; 17 L. T. 599; 16 W. R. 480).

**Factory Operatives.**—FACTORY AND WORKSHOP ACT, 1878.—41 Vict. c. 16; 46 & 47 Vict. c. 53, s. 13.

41 Vict. c. 16, ss. 3, 4, 9.—Definitions: group of premises unroofed as ironworks, part treated as factory (*Palmer v. Chaytor*, L. R. 4 Q. B. 209; 10 B. & S. 177; 19 L. T. 638; 17 W. R. 401); slate quarry open, not a factory (*Kent v. Astley*, L. R. 5 Q. B. 19; 39 L. J. M. C. 3; 21 L. T. 425; 18 W. R. 185; 10 B. & S. 802); a place supplying material for paper factory is a factory (*Coles v. Dickinson*, 16 C. B. (N.S.) 604; 33 L. J. M. C. 235; 10 L. T. 616; 12 W. R. 918); cement works with no large covered building not a factory (*Redgrave v. Lee*, L. R. 9 Q. B. 363; 43 L. J. M. C. 105; 30 L. T. 519; 22 W. R. 857); works for finishing cotton fabrics were not within Act 23 & 24 Vict. c. 78 (*Howarth v. Coles*, 12 C. B. (N.S.) 139; 31 L. J. C. P. 262; 6 L. T. 785); crinoline works held incidental to cotton fabrics (*Whymper v. Harney*, 18 C. B. (N.S.) 243; 34 L. J. M. C. 113; 11 L. T. 711; 13 W. R. 440); calico printing business in two places seven miles apart (*Hoyle v. Oram*, 12 C. B. (N.S.) 124; 31 L. J. C. P. 213; 8 Jur. (N.S.) 1154); a nuisance under Public Health Act (*Norris v. Barnes*, L. R. 7 Q. B. 537; 41 L. J. M. C. 154); daily emission of smoke separate offence (*R. v. Waterhouse*, L. R. 7 Q. B. 545; 41 L. J. M. C. 115; 26 L. T. 761); winding thread from hanks prepared elsewhere (*Haydon v. Taylor*, 4 B. & S. 519; 33 L. J. M. C. 30; 9 L. T. 382; 12 W. R. 103); if skutching incident to printing process, the shed is part of print works (*Hardcastle v. Jones*, 3 B. & S. 153; 32 L. J. M. C. 49; 7 L. T. 322; 11 W. R. 36; 9 Jur. (N.S.) 19); child boring holes in leather, no machinery in room, held a factory (*Taylor v. Hickes*, 12 C. B. (N.S.) 152; 31 L. J. M. C. 242; 6 L. T. 784; 9 Jur. (N.S.) 21); bleaching at a mill seven miles from printing, held incidental (*Hoyle v. Oram*, 12 C. B. (N.S.) 124); child learning straw plaiting with mother's materials held within 30 & 31 Vict. c. 146, ss. 6, 7 (*Beadon v. Parrott*, L. R. 6 Q. B. 718; 40 L. J. M. C. 200; 19 W. R. 1144); mere occupier of brickyard which contractor rents and manages, not liable within 30 & 31 Vict. c. 146, s. 16 (*Fitton v. Wood*, 32 L. T. 554).

41 Vict. c. 16, s. 5—Fencing machinery, owner not liable when machine not working (*Coe v. Platt*, 7 Ex. 923; 22 L. J.

Ex. 164); jury to say if fence is the best known method (*Schofield v. Schunk*, 24 L. T. (o.s.) 253); no defence to master that shaft is distant from a thoroughfare (*Doel v. Sheppard*, 5 E. & B. 856; 25 L. J. Q. B. 124; 2 Jur. (n.s.) 218); killed by wheel, wheel race not fenced, held some evidence of owner's negligence (*Britton v. Great Western*, L. R. 7 Ex. 130; 41 L. J. Ex. 99; 27 L. T. 125; 20 W. R. 525); if penalty concurrent to right of action, as to workman taking risk (*Caswell v. Worth*, 5 E. & B. 849; 25 L. J. Q. B. 121; 2 Jur. (n.s.) 116); right to sue by action when statutory penalty imposed (*Couch v. Steel*, 3 E. & B. 402; 23 L. J. Q. B. 121; 18 Jur. 515); action usually excluded if penalty attached to the act (*Atkinson v. Newcastle*, 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794); if workman taking risk but promised a protection, master is liable (*Holmes v. Clark*, 6 H. & N. 349; 30 L. J. Ex. 135; 3 L. T. 675; 9 W. R. 419; 7 Jur. (n.s.) 397).

41 Vict. c. 16, s. 31.—Injured but returning disabled to work, held reportable accident (*Lakeman v. Stephenson*, L. R. 3 Q. B. 192; 37 L. J. M. C. 57; 17 L. T. 539; 16 W. R. 509; 9 B. & S. 54).

41 Vict. c. 16, s. 45.—Substituting Wednesday half-holiday for Saturday, the penalty not transferred (*Cameron v. Foy*, 30 L. T. 517); how to count the ten hours a day (*Ryder v. Mills*, 3 Ex. 853; 19 L. J. Ex. 82); education of children in factories (*Bury v. Cherryholme*, 1 Ex. D. 457; 35 L. T. 403); how far Education Acts controlled Factory Act (*Mellor v. Denham*, 4 Q. B. D. 241; 48 L. J. M. C. 113; 40 L. T. 395; 27 W. R. 496); reasonable excuse for factory children not at school (*Belper v. Bailey*, 19 Q. B. D. 289; 51 L. J. M. C. 91; 46 J. P. 438); mother having actual custody the person liable (*Hance v. Burnet*, 45 J. P. 54).

**Seamen and Remedies.**—17 & 18 Vict. c. 91; 24 Vict. c. 10; 25 & 26 Vict. c. 63; 30 & 31 Vict. c. 124; 34 & 35 Vict. c. 110; 35 & 36 Vict. c. 73; 36 & 37 Vict. c. 85; 39 & 40 Vict. c. 80; 43 & 44 Vict. c. 16.—Seagoing ships, liability of foreign ships for collision (*Cope v. Doherty*, 27 L. J. Ch. 600; 2 De G. & J. 614; 4 Jur. (n.s.) 699; *The Wild Ranger*, 32 L. J. Adm. 49; 7 L. T. 724; 11 W. R. 255); limited liability applied to foreign ship within three miles of shore (*General v. Shurmans*, 1 J. & H. 180; 29 L. J. Ch. 877; 4 L. T. 138; 8 W. R. 732); seaman's contract of service must be in accordance with statutes (17 & 18 Vict. c. 104, ss. 146—167; 36 & 37 Vict. c. 85, ss. 7, 8; 39 & 40

Vict. c. 80, s. 26) ; no stamp necessary for seaman's hiring (33 & 34 Vict. c. 97, s. 3) ; seaman's wages, how claimable *pro ratâ* (17 & 18 Vict. c. 104, s. 183) ; sailor's wages due up to date of being left behind in foreign place (*Button v. Thompson*, L. R. 2 C. P. 830 ; 38 L. J. C. P. 225) ; seaman entitled to wages during detention (*Beale v. Thompson*, 4 East, 546) ; seaman's misconduct, at common law a forfeiture of wages (*The Pearl*, 5 C. Rob. 224 ; *The Blake*, 1 W. Rob. 73) ; discretion of court given by statutes as to sufficiency of misconduct (17 & 18 Vict. c. 104, s. 243) ; only gross misconduct, as frequent drunkenness, a ground at common law for not paying seaman's wages (*The Gondolier*, 3 Hag. 190 ; *The Malta*, 2 Hag. 158) ; seamen's wages, time of payment fixed by statute (17 & 18 Vict. c. 104, ss. 182, 187) ; seamen's wages not insurable, it being against public policy (*The Lady Durham*, 3 Hagg. 201) ; master of ship not prevented insuring his wages (*King v. Glover*, 2 B. & P. N. R. 206).

*Extra services done by seamen.*—Captain promising extra wages not suable (*Stilk v. Mayrick*, 6 Esp. 129 ; 2 Camp. 317) ; captain agreeing to give extra wages to crew owing to some desertions, not suable (*Harris v. Carter*, 3 E. & B. 559 ; 23 L. J. Q. B. 295 ; 18 Jur. 1014) ; held suable if increased wages paid owing to ship being undermanned (*Hartley v. Ponsonby*, 7 E. & B. 862 ; 26 L. J. Q. B. 322 ; 3 Jur. (n.s.) 746) ; hired as steward on board with stipulation as to transfer, held an agreement to pay higher wages after transfer not binding (*Frazer v. Hatton*, 2 C. B. (n.s.) 512 ; 26 L. J. C. P. 226 ; 3 Jur. (n.s.) 694) ; if seaman not bound to do the work, and free to undertake extra work, but does the extra work, held contract binding on captain (*Clutterbuck v. Coffin*, 3 M. & Gr. 842 ; 4 Sc. N. R. 842 ; 11 L. J. C. P. 65 ; 6 Jur. 131) ; captain of ship dying, first mate increasing wages of those under him, held binding (*Hanson v. Royden*, L. R. 3 C. P. 47 ; 37 L. J. C. P. 66 ; 17 L. T. 214 ; 16 W. R. 205) ; crew entitled to recover for salvage after ship abandoned at sea (*The Florence*, 16 Jur. 572).

17 & 18 Vict. c. 104, s. 142.—Two justices being present at binding of apprentice seaman is judicial act (*R. v. Hamstall*, 3 T. R. 380 ; *R. v. Mills*, 2 B. & Ad. 578) ; not done within the area of jurisdiction of the justices (*R. v. Totnes*, 11 Q. B. 80).

17 & 18 Vict. c. 104, s. 145.—Apprentice suing in Admiralty Court for wages (*Albert Crosby*, Lush. 44).

17 & 18 Vict. c. 104, s. 149.—Agreement must state for



what voyage under the older Act (*The Westmoreland*, 1 W. Rob. 216); stating the crew, and if shorthanded, seaman may refuse to go to sea (*Hartley v. Ponsonby*, 7 E. & B. 872; 26 L. J. Q. B. 322; 8 Jur. (N.S.) 746); description of voyage under former Acts, and master's power to vary (*Elizabeth*, 2 Dods. 408); varying to illegal voyage under Foreign Enlistment Act (*Burton v. Pinkerton*, L. R. 2 Ex. 340; 36 L. J. Ex. 137; 17 L. T. 15; 15 W. R. 1139); engagement as to term of hiring in the alternative not invalid (*Frazer v. Hatton*, 2 C. B. (N.S.) 512; 26 L. J. C. P. 226; 3 Jur. (N.S.) 694); agreement to break blockade not illegal (*The Helen*, 1 Ad. 1; 34 L. J. Ad. 2; 14 W. R. 136; 11 Jur. (N.S.) 1025); change in ownership determines contract with seaman, unless waived (*Robins v. Power*, 4 C. B. (N.S.) 778; 27 L. J. C. P. 257; 4 Jur. (N.S.) 810); if payment in foreign currency, sterling is presumed (*Annie Sherwood*, 12 L. T. (N.S.) 582; 13 W. R. 965); ambiguous agreement construed favourably to seaman (*Nonpareil*, Br. & L. 355; 33 L. J. Ad. 201); agreement is not to have forfeiture clauses (17 & 18 Vict. c. 104, s. 214).

17 & 18 Vict. c. 104, s. 167.—Grounds of discharging seaman rigidly examined (*Robinet v. Exeter*, 2 C. Rob. 261).

17 & 18 Vict. c. 104, s. 168.—Allotment notes (43 & 44 Vict. c. 16, s. 3); as to advance partly in clothes (*Mackune v. Joynson*, 5 C. B. (N.S.) 218; 28 L. J. C. P. 133; 4 Jur. (N.S.) 760); conditional advance notes illegal (43 & 44 Vict. c. 16, s. 2).

17 & 18 Vict. c. 104, s. 169; 43 & 44 Vict. c. 16, s. 3.—Owner during demise of ship not liable to wife for arrears of allotment notes (*Meiklereid v. West*, 1 Q. B. D. 428; 45 L. J. M. C. 91; 34 L. T. 353; 24 W. R. 713).

17 & 18 Vict. c. 104, s. 176.—Falsifying report of character, altering character is forgery (*R. v. Wilson*, 27 L. J. M. C. 230; D. & B. 558; 4 Jur. (N.S.) 670).

17 & 18 Vict. c. 104, s. 181.—Seaman discharged before voyage commences suing for wages (*City of London*, 1 W. Rob. 88); if voyage abandoned, remedy at common law (*The Debrecsia*, 3 W. Rob. 37); wages to be paid per month held due at end of month (*Button v. Thompson*, L. R. 4 C. P. 330; 38 L. J. C. P. 225); death of seamen during voyage, wages due on *quantum meruit* (*Jesse v. Roy*, 1 C. M. R. 316; 4 Tyr. 626); sent home by authority of consul as witness held a dissolution of contract (*Melville v. De Wolfe*, 4 E. & B. 844; 24 L. J. Q. B. 200; 1 Jur. (N.S.) 758); in case of wreck, final

abandonment determines contract (*The Warrior*, Lush. 476; 6 L. T. 133); foreign seamen discharged here entitled out of proceeds of ship to passage money (*Primeiro*, 3 L. T. 513); seamen of disabled foreign ship entitled to allowance home (*Gustaf*, Lush. 506; 31 L. J. Ad. 207; 6 L. T. 660); seaman impressed entitled to wages up to date (*Wiggins v. Ingleton*, 2 L. Raym. 1211).

17 & 18 Vict. c. 104, s. 182.—Lien for wages; assignment by seaman of rights after salvage void (*The Rosario*, 2 Prob. D. 41; 46 L. J. Ad. 52; 35 L. T. 810); discretion of Admiralty Court not fettered by these provisions (*The Ganges*, L. R. 2 Adm. 370; 38 L. J. Ad. 61); liens for damage by collision prior to seamen's lien for wages (*The Elin*, 52 L. J. Prob. 55; 8 Prob. D. 129; 49 L. T. 87; 31 W. R. 736); seamen's lien in priority to master's lien (*The Salacia*, 32 L. J. Adm. 41; 8 L. T. 91; 11 W. R. 189; 9 Jur. (N.S.) 27).

17 & 18 Vict. c. 104, s. 187.—Master's account with seamen, suing for double pay (*Princess Helena*, Lush. 191; 30 L. J. Adm. 137; 4 L. T. 869); master before suing bound to account (*Fleur de Lis*, L. R. 1 Ad. 49; 12 Jur. (N.S.) 379); master and seamen next after salvor precede shipwright's wages (*The Gustaf*, Lush. 506; 31 L. J. Adm. 207; 6 L. T. 660).

17 & 18 Vict. c. 104, s. 188.—Master suing for wages; place of residence (*Blakeney*, Swab. 428; 5 Jur. (N.S.) 418).

17 & 18 Vict. c. 104, s. 191.—Master's remedy for wages, if leaving for ill-health (*The Cochín*, Swab. 473); at common law no lien on freight for wages (*Smith v. Plummer*, 1 B. & Ald. 574; *Bristow v. Whitmore*, 9 H. L. C. 391; 31 L. J. Ch. 467; 4 L. T. 622; 9 W. R. 621); master of foreign ship, if entitled to sue freight (*The Milford*, Swab. 362); Admiralty Court's discretion (*The Marie*, Lush. 292; 5 L. T. 88); counter-claim by owner, priority of master to bondholder (*The Daring*, L. R. 2 Ad. 260); master's double pay, if delayed (*The Princess Helena*, Lush. 190; 4 L. T. 869).

17 & 18 Vict. c. 104, s. 215.—Wages on seamen volunteering; seaman not entitled to remuneration for extraordinary services (*Thompson v. Havelock*, 1 Camp. 527); *The Araminta*, 1 Spiuks, 224; contract for higher pay than government allowance valid (*Clutterbuck v. Coffin*, 3 M. & Gr. 842; 4 Sc. N. R. 509; 11 L. J. C. P. 65; 6 Jur. 131; *England v. Davidson*, 11 A. & E. 856); if seaman promoted to mate

entitled to extra pay (*Hanson v. Royden*, L. R. 3 C. P. 47; 37 L. J. C. P. 66; 17 L. T. 214; 16 W. R. 205); if chief mate on master's death succeed, crew bound to obey (*Renno v. Bennett*, 3 Q. B. 768; 12 L. J. Q. B. 17).

*Suing in Admiralty for Wages* (24 Vict. c. 10).—If wages under 50*l.*, whether 17 & 18 Vict. c. 104, s. 189, now excludes remedy in Admiralty, Order lv. (*Garnett v. Bradley*, 3 App. C. 944; 48 L. J. Ex. 186; 39 L. T. 261; 26 W. R. 698); damages for wrongful discharge recoverable (*Great Eastern*, 1 Ad. 384; 36 L. J. Ad. 15; 17 L. T. 228; *The Blessing*, 3 Ad. 35; 38 L. T. 259; 26 W. R. 404); jurisdiction extends to wages under special contract (*Nina*, 2 Pr. C. 38; 37 L. J. Ad. 17; 17 L. T. 585; 5 Moo. P. C. (N.S.) 60); woman cook may sue (*The Jane*, 1 Hag. 187); apprentice may sue (*Albert Crosby*, Lush. 44); suit may be against ship and freight or against owners (24 Vict. c. 10, s. 35); seaman may sue in Admiralty, or at common law may sue master (*The Salacia*, Lush. 548; *Jack Park*, 4 C. Rob. 308; *The Stephen Wright*, 12 Jur. 732); action against ship and freight applies to all parts of ship (*The Julia*, 2 Dods. 504); no lien on cargo for wages (*Lady Durham*, 3 Hag. 200; *Riby Grove*, 2 W. Rob. 59); master now has a lien on ship and freight for wages (17 & 18 Vict. c. 104; *The Feronia*, 2 Ad. 65; 37 L. J. Ad. 60; 17 L. T. 619; 16 W. R. 585); County Courts Admiralty jurisdiction (31 & 32 Vict. c. 71, s. 3); remedy if owners are wound up is in the winding-up proceedings (*Re Australian*, 20 Eq. 325; 45 L. J. Ch. 676); if owner is bankrupt, remedy of seaman (*Halliday v. Harris*, L. R. 9 C. P. 668; 43 L. J. C. P. 350; 30 L. T. 680; 22 W. R. 756).

17 & 18 Vict. c. 104, ss. 188, 519.—Justices' jurisdiction for seaman's wages under 50*l.*, as to appeal (42 & 43 Vict. c. 49, s. 33).

17 & 18 Vict. c. 104, s. 223.—Remedy for short provisions by compensation (*The Josephine*, 1 Swab. 152); remedy for unfit provisions, if by action (*Couch v. Steel*, 3 E. & B. 402; 23 L. J. Q. B. 121; *Atkinson v. Newcastle*, 2 Ex. D. 441; 46 L. J. Ex. 775; 36 L. T. 761; 25 W. R. 794; 34 & 35 Vict. c. 110, s. 7; 36 & 37 Vict. c. 85, s. 9).

17 & 18 Vict. c. 104, s. 228.—Medical attendance during illness from accident, owner not impliedly bound (*Organ v. Brodie*, 10 Ex. 449; 24 L. J. Ex. 70); liability for injuries enforced by penalty (*Secretary v. Sundholm*, 4 Asp. 196).

17 & 18 Vict. c. 104, s. 239.—Discipline; sections apply to British ships only (*Leary v. Lloyd*), 3 E. & E. 178; 29 L. J.

M. C. 194; 6 Jur. (N.S.) 1246); act tending to endanger limb, when indictable (*R. v. Gardner*, 1 F. & F. 669).

17 & 18 Vict. c. 104, s. 240.—Removal of master (25 & 26 Vict. c. 63, s. 23); fraud justifying master's removal (*The Royalist*, Br. & L. 46; 32 L. J. Prob. 105; 9 Jur. (N.S.) 852).

7 & 18 Vict. c. 104, s. 243 *et seq.*—Desertion by seamen; no desertion if personal danger apprehended (*Limland v. Stephen*, 3 Esp. 265); leaving, though master consent (*The Pearl*, 5 C. Rob. 224; crew bound to delivery of cargo (*The Baltic*, Edw. 86); imprisoned abroad during embargo, wages due (*Delamainer v. Winteringham*, 4 Camp. 186); if provisions insufficient, no forfeiture by desertion (*Castilia*, 1 Hag. 59); serving on shore, then refusing to return, is desertion (*The Bulmer*, 1 Hag. 163; *The Jupiter*, 2 Hag. 221); compulsion to go a voyage not in agreement (*The Minerva*, 1 Hag. 347; *The Westmoreland*, 1 W. Rob. 216); captain waiving improper acts (*Train v. Bennet*, 3 C. & P. 3; M. & M. 82); going ashore for illness justifiable (*The Test*, 3 Hag. 307); insubordination when drunk, if discharge necessary (*The Blake*, 1 W. Rob. 73); fear of punishment justifies desertion (*Edwards v. Trevellick*, 4 E. & B. 59; 24 L. J. Q. B. 9; 1 Jur. (N.S.) 110); left behind abroad from his own negligence, wages due up to date (*Button v. Thompson*, L. R. 4 C. P. 330; 38 L. J. C. P. 225).

**Miners and Remedies.**—Mines (Coal) Act, 1872 (35 & 36 Vict. c. 76; Home Office Circular, 28th November, 1872); mine distinguished from quarry (*Bell v. Wilson*, 1 Ch. 303; 35 L. J. Ch. 337; 14 L. T. 115; 74 W. R. 393); clay and sand under a custom, held not to apply to quarry or mine (*A. G. v. Mylechreest* (4 App. C. 294; 48 L. J. Pr. C. 36; 40 L. T. 764).

35 & 36 Vict. c. 76, s. 15.—Neglect to provide indicator to steam engine, as to limitation of time (*R. v. Mainwaring*, E. B. E. 474; 27 L. J. M. C. 278; 4 Jur. (N.S.) 928); contractor's liability implying knowledge; charter master of pit held to be in charge of lowering men, and liable as abetting (*Howells v. Wynne*, 32 L. J. M. C. 241; 15 C. B. (N.S.) 3; 9 Jur. (N.S.) 1041); knowledge of females being employed on one occasion only, not sufficient (*R. v. Handley*, 9 L. T. 827); as to locking safety lamps, if owner liable (*Dickenson v. Fletcher*, L. R. 9 C. P. 1; 43 L. J. M. C. 25; 29 L. T. 540); reasonable means of compliance (*Hall v. Hopwood*, 49

L. J. M. C. 17); permitting a person to contravene, implies knowledge of employer (*R. v. Handley*, 9 L. T. 827).

35 & 36 Vict. c. 76, s. 18.—Checkweigher; misconduct of checkweigher, though not interrupting mine working (*Prentice v. Hall*, 37 L. T. 665; 26 W. R. 237); checkweigher's function ceases when all the men discharged (*Whitehead v. Holdsworth*, 4 Ex. D. 13; 48 L. J. Ex. 254; 39 L. T. 638; 27 W. R. 94); if checkweigher resigns or is discharged, incompetent for re-appointment (*Hopkinson v. Caunt*, 14 Q. B. D.; 49 J. P. 450).

35 & 36 Vict. c. 76, s. 22.—Slipping of rope on drum (*Baker v. Carter*, 3 Ex. D. 132; 47 L. J. M. C. 87).

35 & 36 Vict. c. 76, s. 26.—Supervision of manager; owner not liable for negligence of certificated manager injuring a miner (*Howells v. Landore*, L. R. 10 Q. B. 62; 44 L. J. Q. B. 25; 32 L. T. 19; 23 W. R. 335).

35 & 36 Vict. c. 76, s. 39.—Notice of personal injury to inspector, if life not lost (*Underhill v. Longridge*, 29 L. J. M. C. 65; 6 Jur. (N.S.) 221).

35 & 36 Vict. c. 76, s. 41.—Mine abandoned; abandoned before or after act, who is the owner (*Stott v. Dickenson*, 34 L. T. 291; *R. v. Gratrex*, 12 Cox, 157); who is person interested in minerals (*Evans v. Mostyn*, 2 C. P. D. 547; 47 L. J. M. C. 25; 36 L. T. 856); mineral owner bound to fence disused mine shaft (*Williams v. Groucott*, 4 B. & S. 149; 39 L. J. Q. B. 237; 8 L. T. 458; 11 W. R. 886; 9 Jur. (N.S.) 1237).

35 & 36 Vict. c. 76, s. 46.—Notice describing dangerous matters, as flood water (*R. v. Spon*, 3 Q. B. D. 673; 48 L. J. M. C. 24; 39 L. T. 13; 27 W. R. 46).

35 & 36 Vict. c. 76, s. 51.—Ventilation of working places; state of ventilation for working of working places before stat. 35 & 36 Vict. c. 76, s. 51 (*Brough v. Homfray*, L. R. 3 Q. B. 771; 37 L. J. M. C. 177; 16 W. R. 1123; 9 B. & S. 492); manager not bound to spend own money in ventilating (*Knowles v. Dickenson*, 2 E. & E. 705; 29 L. J. M. C. 135; 6 Jur. (N.S.) 678; 8 W. R. 411); Rule 22; owner if not taking part in the management not liable (*Baker v. Carter*, 3 Ex. D. 132; 47 L. J. M. C. 87; 26 W. R. 444); Rule 23; pumping gear intended as break not sufficient break (*Nimmo v. Clark*, 10 Macph. (Sc.) 477); owner not liable if appointing competent inspector (*Dickenson v. Fletcher*, L. R. 9. C. P. 1; 43 L. J. M. C. 25; 29 L. T. 540; *Howells v. Landore*, L. R. 10 Q. B. 62; 44 L. J. Q. B. 25; 32 L. T. 19; 23 W. R. 335).



35 & 36 Vict. c. 76, s. 52.—Special rules ; men dissatisfied ascending without leave of hooker-on held finable (*Higham v. Wright*, 2 C. P. D. 397 ; 46 L. J. M. C. 223 ; 37 L. T. 187) ; owner bound to bring up safe, though miners leaving without notice (*Brydon v. Stewart*, 1 Paters. 447 ; 2 Macq. 30) ; owner, agent, and manager all liable (*Wynne v. Forrester*, 5 C. P. D. 361 ; 48 L. J. M. C. 140 ; 40 L. T. 524) ; ventilation might have been improved with means in hand (*Hall v. Hopwood*, 49 L. J. M. C. 17 ; 41 L. T. 797).

35 & 36 Vict. c. 76, s. 60.—One of several owners charged with penalty (*R. v. Brown*, 7 E. & B. 757 ; 26 L. J. M. C. 183 ; 3 Jur. (n.s.) 745) ; omitting notice of accident, if no loss of hire (*Underhill v. Longridge*, 29 L. J. M. C. 65 ; 6 Jur. (n.s.) 221).

35 & 36 Vict. c. 76, s. 70.—Definition of owner (*Stott v. Dickenson*, 34 L. T. 291) ; definition of agent ; managing agent by appointing workman (*Stokes v. Miller*, 39 J. P. 788).

*Metalliferous Mines Act*, 1872 (35 & 36 Vict. c. 77 ; 38 & 39 Vict. c. 39).

35 & 36 Vict. c. 77, s. 3.—Distinguished from slate quarry (*Sim v. Evans*, 23 W. R. 730).

35 & 36 Vict. c. 77.—Men coming up in skip or open box held liable (*Frecheville v. Souden* 48, L. T. 612 ; 47 J. P. 613).

35 & 36 Vict. c. 77, s. 13.—Mine discontinued, long lease, owner still liable (*Evans v. Mostyn*, 2 C. P. D. 547 ; 47 L. J. M. C. 25) ; lessee of lead mine neither owner nor interested in (*Arkwright v. Evans*, 49 L. J. M. C. 82).

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## APPENDIX OF STATUTES AND RULES.

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(9 & 10 VICT. CAP. 93.) (See notes, *ante*, p. 75.)

*An Act for Compensating the Families of Persons killed by Accidents.*  
[26th August, 1846.]

*Person causing death through neglect, &c.]* Whereas no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. *Action for the benefit of certain relations.]* And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. *Only one action shall lie.]* Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject

matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

4. *Plaintiff to deliver a full particular.*] And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. *Construction of Act.*] And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. *Act to take effect after passing.*] And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. *Act may be amended, &c.*] And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of parliament.

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(27 & 28 VICT. CAP. 95.)

*An Act to amend the Act Ninth and Tenth Victoria, Chapter Ninety-three, for Compensating the Families of Persons killed by Accident.*

[29th July, 1864.]

WHEREAS it is expedient to amend and extend the Act 9 & 10 Vict. c. 93, as hereinafter mentioned: Be it therefore enacted as follows:—

1. *Where no action brought within six months by executor of person killed.*] If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act, that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator, no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so brought shall be for the benefit

of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. *Money paid into court may be paid in one sum.*] And whereas by the second section of the said Act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. *Acts to be read as one.*] This Act and the said Act shall be read together as one Act.

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## CONSPIRACY AND PROTECTION OF PROPERTY.

(38 & 39 VICT. CAP. 86.) (See notes, *ante*, p. 69.)

*An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.* [13th August, 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Short title.*] This Act may be cited as the Conspiracy and Protection of Property Act, 1875.

2. *Commencement of Act.*] This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

### *Conspiracy and Protection of Property.*

3. *Amendment of law as to conspiracy in trade disputes.*] An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the state or the sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable, under the statute making the offence punishable, to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. *Breach of contract by persons employed in supply of gas or water.*] Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. *Breach of contract involving injury to persons or property.*] Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others,



will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

*Miscellaneous.*

6. *Neglect by master to provide food, clothing, &c.*] Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

7. *Penalty for intimidation or annoyance by violence or otherwise.*] Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do, or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates such other person or his wife or children, or injures his property ; or
  2. Persistently follows such other person about from place to place ; or
  3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or
  4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place ; or
  5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,
- shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

8. *Reduction of penalties.*] Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act.

*Legal Proceedings.*

9. *Power to be tried on indictment.*] Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence, and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

10. *Proceedings before court of summary jurisdiction.*] Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction, or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

11. *Regulations as to evidence.*] Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

12. *Appeal to quarter sessions.*] In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county.

(The remainder of this section was repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), so that now the procedure is regulated by the Summary Jurisdiction Acts, 42 & 43 Vict. c. 49, and 47 & 48 Vict. c. 43.)

*Definitions.*

13. *General definitions:* “*The Summary Jurisdiction Act,*” &c.] In this Act,—

The expression “*the Summary Jurisdiction Act*” means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” inclusive of any Acts amending the same; and

The expression “*court of summary jurisdiction*” means—

(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice-room; and

- (2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division ; and
- (3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf ; and
- (4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

14. *Definitions of "municipal authority" and "public company."*] The expression "*municipal authority*" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being, subject to the act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. "*Maliciously*" in this Act construed as in *Malicious Injuries to Property Act*.] The word "*maliciously*" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

*Saving Clause.*

16. *Saving as to sea service.*] Nothing in this Act shall apply to seamen or to apprentices to the sea service.

*Repeal.*

17. *Repeal of Acts.*] On and after the commencement of this Act, there shall be repealed :—

- I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter thirty-two, intituled “An Act to amend the Criminal Law relating to violence, threats, and molestation ;” and
- II. “The Master and Servant Act, 1867,” and the enactments specified in the First Schedule to that Act, with the exceptions following as to the enactments in such Schedule ; (that is to say,)

- (1.) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled “An Act to authorise justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentice ; and also to make provision for the execution of warrants of distress granted by magistrates,” as relates to constables, overseers, and other peace or parish officers ; and
- (2.) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled “An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of the counties in which they actually are ; to make provision for the execution of warrants of distress granted by them ; and to authorise them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices,” as relates to constables and other peace or parish officers ; and
- (3.) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled “An Act to explain the Acts for the better regulation of certain apprentices ;” and
- (4.) Except sub-sections one, two, three, and five of section sixteen of “The Summary Jurisdiction (Ireland) Act, 1851,” relating to certain disputes between employers and the persons employed by them ; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure ; (that is to say,)

- (a.) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled “An Act touching

dyvers orders for artificers, labourers, servantes of husbandry, and apprentices ;” and

- (b.) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled “An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages,” as relates to departing from service and quitting or returning work before it is finished ; and
- (c.) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words “An Act for repealing several Laws relating to the manufacture of woollen cloth in the county of York,” and ends with the words “for preserving the credit of the said manufacture at the foreign market ;” and
- (d.) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled “An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory ;” and
- (e.) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled “An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament ;” and
- (f.) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words “An Act to amend the Laws,” and ends with the words “workmen engaged therein ;” and
- (g.) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled “An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases.”

Provided that,—

- (1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of “The summary Jurisdiction (Ireland) Act, 1851,” may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise ; and



(2.) The repeal enacted by this section shall not affect—

- (a.) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed ; or
- (b.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
- (c.) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

*Application of Act to Scotland.*

18. *Application to Scotland. Definitions.*] This Act shall extend to Scotland, with the modifications following ; that is to say,—

- (1.) The expression “municipal authority” means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867 :
- (2.) The expression “The Summary Jurisdiction Act” means the Summary Procedure Act, 1864, and any Acts amending the same :
- (3.) The expression “the court of summary jurisdiction” means the sheriff of the county or any one of his substitutes.

19. *Recovery of penalties, &c., in Scotland.*] In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

- (1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court :
- (2.) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864 :
- (3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :
- (4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen’s and Lord Treasurer’s Remembrancer, and be carried to the Consolidated Fund.

20. *Appeal in Scotland, as prescribed by 20 Geo. 2, c. 43.*] In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

*Application of Act to Ireland.*

21. *Application to Ireland.*—This Act shall extend to Ireland, with the modifications following; that is to say,—

The expression “The Summary Jurisdiction Act” shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :

The expression “court of summary jurisdiction” shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression “municipal authority” shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, entitled “An Act for the Regulation of Municipal Corporations in Ireland,” and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

## EMPLOYERS AND WORKMEN ACT, 1875.

(38 & 39 VICT. CAP. 90.) (See notes *ante*, p. 69.)

*An Act to enlarge the powers of County Courts in respect of disputes between Employers and Workmen, and to give other Courts a limited civil jurisdiction in respect of such disputes.* [13th August, 1875.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

1. *Short title.*] This Act may be cited as the Employers and Workmen Act, 1875.

2. *Commencement of Act.*] This Act, except so far as it authorizes any rules to be made or other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

## PART I.

*Jurisdiction—Jurisdiction of County Court.*

3. *Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.*] In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,—

- (1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,
- (2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
- (3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the

whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

#### *Court of Summary Jurisdiction.*

4. *Jurisdiction of justices in disputes between employers and workmen.*] A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction —

- (1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and
- (2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and
- (3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

5. *Jurisdiction of justices in disputes between masters and apprentices.*] Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), may be heard and determined by a court of summary jurisdiction.

6. *Powers of justices in respect of apprentices.*] In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

- (1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and
- (2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied

after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. *Order against surety of apprentice, and power to friend of apprentice to give security.*] In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorized to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorized to inflict upon the apprentice.

## PART II.

### *Procedure.*

8. *Mode of giving security.*] A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

9. *Summary proceedings.*] Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.



A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made, in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

### PART III.

#### *Definitions and Miscellaneous.*

##### *Definitions.*

10. *Definitions*: “*workman*:” “*the Summary Jurisdiction Act*.”] In this Act—

The expression “*workman*” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

The expression “*the Summary Jurisdiction Act*” means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” inclusive of any Acts amending the same.

The expression “*court of summary jurisdiction*” means—

- (1.) As respects the city of London, the lord mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and
- (2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and
- (3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting,

such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

- (4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, a complaint under this Act shall be heard and determined and an order for imprisonment made by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the lord mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate in respect of any act or jurisdiction which may now be done or exercised by him out of court.

11. *Set off in case of factory workers.*] In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

#### *Application.*

12. *Application to apprentices.*] This Act, in so far as it relates to apprentices, shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

#### *Saving Clause.*

13. *Saving of special jurisdiction, and seamen.*] Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

### PART IV.

#### *Application of Act to Scotland.*

14. *Application to Scotland. Definitions.*] This Act shall extend to Scotland, with the modifications following; that is to say,

In this Act with respect to Scotland—

The expression “county court” means the ordinary sheriff court of the county:

The expression “the court of summary jurisdiction” means the small debt court of the sheriff of the county:

The expression “sheriff” includes sheriff substitute:

The expression “instrument of apprenticeship” means indenture:

The expression “plaintiff” or “complainant” means pursuer or complainer:

The expression “defendant” includes defender or respondent:

The expression "the Summary Jurisdiction Act" means the Act of the seventh year of the reign of His Majesty King William the Fourth and the first year of the reign of Her present Majesty, chapter forty-one, intituled "An Act for the more effectual recovery of small debts in the sheriff courts, and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland," and the Acts amending the same:

The expression "surety" means cautioner.

This Act shall be read and construed as if for the expression "the Lord Chancellor," wherever it occurs therein, the expression "the Court of Session by act of sederunt" were substituted.

All jurisdictions, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

## PART V.

### *Application of Act to Ireland.*

15. *Application to Ireland.*] This Act shall extend to Ireland, with the modifications following; that is to say,

The expression "county court" shall be construed to mean civil bill court:

The expression "Lord Chancellor" shall be construed to mean the Lord Chancellor of Ireland:

The expression "the Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ireland), 1872."

## RULES UNDER EMPLOYERS AND WORKMEN ACT, 1875.

1877.

The rules made under the powers contained in the Employers and Workmen Act, 1875, and which are now in use in courts of summary jurisdiction in England, shall, on and from the 1st day of November, 1877, cease to be used, and from such day there shall be used, in lieu thereof, the following rules:—

1. A person desirous to enter an action in a court of summary jurisdiction in England under the Employers and Workmen Act, 1875, shall deliver to the clerk of the court *particulars* in writing of his cause of action, and the clerk of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names, addresses, and descriptions of the parties, and the substance of the action intended to be brought; and thereupon a summons to appear to the plaint shall be issued according to the form in the schedule, and a copy thereof be served in the manner hereinafter provided, not less than four clear days before the return day of the summons; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

2. The *particulars* shall be annexed to and be deemed part of the summons.

3. Such summons may issue in *any district* in which the defendant or one of the defendants dwelt or carried on his business or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the plaint.

4. *Service of a summons* to appear to a plaint may be made by serving a copy of the same personally upon the defendant, or by leaving such copy with some person, apparently sixteen years old, at the house or place of dwelling or place of business or of employment of the defendant, or of one of the defendants, or at the office of his or their employer for the time being.

*Witnesses.*

5. Summonses to witnesses shall be granted to either party on application and payment of the fees for the issuing and service of the same, and of the proper amount of conduct money.

*Hearing.*

6. A defendant shall not, except by leave of the court, on such terms as to it may seem fit, be permitted to set up against the claims of the plaintiff any *set-off* or *counter-claim*, unless he shall have served, or caused to be served, by registered post letter or otherwise, two clear days at least before the return day, a notice directed to the plaintiff at

his address as mentioned in the summons, stating his intention to rely upon such set-off or counter-claim as a defence to the action, and setting forth the particulars of such set-off or counter-claim.

7. Where *service* of any notice is made *by post*, it shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

8. If upon the return day of any summons, or at any continuation or adjournment of the court, the *plaintiff shall not appear*, the cause may be struck out, and the court may award to the defendant, by way of costs and satisfaction for his attendance, such sum as it in its discretion shall think fit; but the plaintiff may bring a fresh action in respect of the same cause or complaint.

9. If on the day named in the summons, or at any continuation or adjournment of the court, the *defendant shall not appear*, or sufficiently excuse his absence, or shall neglect to answer when called in court, the court, upon due proof of service of the summons, may either adjourn the cause from time to time or hear it *ex parte*, and the judgment thereupon shall be as valid as if both parties had attended; provided that the court in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial upon such terms, if any, as it may think fit.

10. Every *undertaking* by way of security under the said Act may be given to the court, or to such person as the court may direct, in writing or orally; and upon the production of the written undertaking, or of any note made by the clerk of the court where the undertaking was given orally, the court may summon any person liable to the court or to any surety for any sum which has become forfeited, and may make such order therein as to the court may seem fit.

#### *Enforcing Judgment.*

11. Any sum adjudged by the court to be paid under the said Act, and any instalment or part thereof which has become due, and any sum ordered by the court to be paid in respect of the forfeiture of any sum under any security given under the said Act, may be recovered *by distress warrant* in the form in the schedule issued by any justice or magistrate acting in and for the district for which the court was held; provided always, that the person liable for the payment of any such sum shall have been at some time served with the order of the court in the same manner as a summons to appear to a plaint is hereby directed to be served.

12. Where an order has been made *directing an apprentice* to perform his duties under his apprenticeship, and he shall have failed to comply therewith, no order of commitment shall be made on account of his having so failed until he shall have been personally served with a judgment-summons.



*Judgment Summons.*

13. No order of commitment under the Debtors Act, 1869, shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment summons, shall have been personally served upon the judgment debtor.

14. A judgment summons may issue although no distress warrant has been applied for, and its service where made out of the district may be proved by affidavit.

15. Every judgment summons may be according to the form in the schedule, and shall be served not less than two clear days before the day on which the judgment debtor or apprentice is required to appear, except the judgment debtor or apprentice is stated to be about to remove or to be keeping out of the way to avoid service.

16. The hearing of a judgment summons may be adjourned from time to time.

17. Any witness may be summoned to prove the means of the judgment debtor, in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint.

18. An order of commitment made under the Debtors Act, 1869, may be according to the form in the schedule, and shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer.

19. When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the officer holding such order the amount indorsed thereon, as that on the payment of which he may be discharged; and on receiving such amount the officer shall discharge the defendant, and shall forthwith pay over the amount to the clerk of the court.

20. The *sum indorsed on the order of commitment* as that upon payment of which the prisoner may be discharged may be paid to the clerk of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is. Where it is paid to the clerk, he shall sign and seal a certificate of such payment, and upon receiving such certificate by post or otherwise, the gaoler in whose custody the prisoner shall then be shall forthwith discharge such prisoner. And where it is paid to the gaoler, he shall, upon payment to him of such amount, together with costs sufficient to pay for transmitting by post-office order or otherwise such amount to the court under the order of which the prisoner was committed, sign a certificate of such payment, and discharge the prisoner, and forthwith transmit the sum so received to the clerk of the court.

21. A certificate of payment by a prisoner shall be according to the form in the schedule.

22. All *costs* incurred by the plaintiff in endeavouring to enforce an order shall be deemed to be due in pursuance of such order under section 5 of the Debtors Act, 1869, unless the court shall otherwise order.

*Service of Process.*

23. Service of any summons, order, or process under the Act or these rules may be made by any officer duly authorised to serve summonses within the district in which the summons, order, or process is to be served, and may be proved by affidavit, or by oath *vivâ voce*.

*Costs.*

24. The costs to be paid in the first instance by every person seeking the assistance of the court shall be those contained in the schedule annexed hereto.

25. The court may, in its discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

*Forms.*

26. The forms\* given in the Schedule shall be used, with such variations as may be necessary to meet the circumstances of each court.

CAIRNS, C.

29th August, 1877.

RULES UNDER EMPLOYERS AND WORKMEN ACT, 1875.

1884.

Pursuant to the powers given by the Employers and Workmen Act, 1875, it is ordered as follows :—

Where disputes between an employer and his workmen, cognizable by a court of summary jurisdiction in England under the fourth section of the Employers and Workmen Act, 1875, have arisen, and are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the following procedure may be adopted for the purpose of avoiding multiplicity of proceedings :

1. The names of all the workmen, whose claims are grounded upon common circumstances, may be inserted as *plaintiffs in one summons*.

Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be indorsed on the summons or added in a schedule thereto annexed.

\* N.B.—These forms are sold by Messrs. Shaw & Sons, price 3d.

2. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be *separately heard* and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances.

The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the court.

3. When the summons comes on for hearing, the case of the *plaintiff first named* in the summons shall (unless the court otherwise directs) be heard and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not objected to as in Rule 2 provided, shall abide the result of the case so determined.

4. If the court dismisses the summons no claim shall afterwards be admitted at the instance of any workman whose name was included in the summons (and was not struck out as in Rule 2 provided) in respect of the claim made thereby, unless he shows to the satisfaction of the court that his name was included in the summons without his consent.

5. If the court finds in favour of the plaintiff whose case is tried, it shall make *an order on all the claims* of the plaintiff included (without objection) in the summons, and such order shall operate and take effect as if the claim of each workman, whose name may have been so included as a plaintiff in the summons, and not objected to, had been separately heard and determined by the court, and an order had been made on each such claim.

6. These rules may be cited as the Employers and Workmen Rules, 1884; they shall come into operation the 1st day of October, 1884, and shall, so far as may be consistent with the tenour thereof, be construed as one with the rules made in 1877 pursuant to the powers conferred by the Employers and Workmen Act, 1875.

The forms prescribed by the said rules of 1877 may, with such variations as circumstances may require, be used in proceedings under these rules.

(Signed)

SELBORNE, C.

22nd August, 1884.

## EMPLOYERS LIABILITY ACT, 1880.

(43 & 44 VICT. CAP. 42.) (See notes *ante*, p. 76.)

*An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their service.*  
[7th September, 1880.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Amendment of law.*] Where after the commencement of this Act personal injury is caused to a workman :

- (1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or
  - (2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence ; or
  - (3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or
  - (4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or
  - (5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,
- the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

2. *Exceptions to amendment of law.*] A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases ; that is to say,

- (1.) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.
- (2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned ; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.
- (3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. *Limit of sum recoverable as compensation.*] The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during

those years in the like employment and in the district in which the workman is employed at the time of the injury.

4. *Limit of time for recovery of compensation.*] An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. *Money payable under penalty to be deducted from compensation under Act.*] There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament, in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

6. *Trial of actions.*] (1.) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2.) Upon the trial of any such action in a county court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

“County court” shall, with respect to Scotland, mean the “Sheriff’s Court,” and shall, with respect to Ireland, mean the “Civil Bill Court.”

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by and subject to the conditions prescribed by section nine of the Sheriff Courts (Scotland) Act, 1877 (40 & 41 Vict. c. 50).



In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties, and in respect of different injuries.

**7. Mode of serving notice of injury.]** Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter, addressed to the person on whom it is to be served at his last known place of residence or place of business ; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

**8. Definitions.]** For the purposes of this Act, unless the context otherwise requires—

The expression “person who has superintendence entrusted to him,” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

The expression “employer” includes a body of persons corporate or unincorporate :

The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), applies.

**9. Commencement of Act.]** This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

**10. Short title.]** This Act may be cited as the Employers Liability Act, 1880, and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

## COUNTY COURT RULES, 1880.

ORDER XXXIX<sup>b</sup>.

## THE EMPLOYERS LIABILITY ACT, 1880.

*Service of Summons.*

13. (1.) *Summonses when to be served.*] A summons in an action brought under the provisions of the Employers Liability Act, 1880, where it is to be served in the home district, shall be delivered to the bailiff thirty-two clear days at least, and where it is to be served in a foreign district, thirty-five clear days before the return day, but it shall in either case be served thirty clear days before the return day thereof.

14. (2.) *Particulars to be filed.*] Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be ; and a copy thereof shall be forthwith sent to the judge.

15. (3.) *What particulars of demand shall state.*] The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed, and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains shall have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

*Jury.*

16. (4.) *Notice of demand for a jury.*] Notice of a demand for a jury shall be given in writing to the registrar of the court fifteen clear days at least before the return day, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

*Assessors.*

17. (5.) *Qualification of assessors.*] Any person who shall, as herein-after provided, be appointed by the judge to act as an assessor in the action, shall be qualified so to act.

18. (6.) *How assessors are to be applied for.*] Where no demand for a jury shall have been made, a party who desires assessors to be appointed shall, ten clear days at least before the return day, file an application according to the form in the schedule, stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as

assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

19. (7.) *Where application for assessors made by one party only, it shall be forwarded to the other party.*] Where the application for the appointment of assessors has been made by one party to an action only, the registrar shall forward the application so made to the other party, who may then either file an application for assessors, or file objections to one or more of the persons proposed.

20. (8.) *Where both parties propose assessors.*] Where separate applications are filed by the parties, no objection to the person proposed shall be made by either party, but the judge may appoint from the persons named in each application one or more assessor or assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

21. (9.) *Application to be forwarded to judge.*] The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the judge.

22. (10.) *If judge grant application for assessors.*] Where the judge shall grant the application for the appointment of assessors, he shall appoint such of the persons proposed for assessors as he may think fit, subject to the provisions hereinbefore or hereinafter contained in this order.

23. (11.) *Judge, whether application has or has not been made, may appoint assessors.*] In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the judge may, either before or at the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the judge may, if he think fit, appoint any one or more persons to act as assessor or assessors in the action before or at the return day.

24. (12.) *Where assessors fail to attend.*] If at the time and place appointed for the trial all or any of the assessors appointed shall not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any, as shall attend, or he may adjourn the trial generally, or upon any terms which he may think fit, or he may appoint any person who may be available and who is willing to act, and who is not objected to, or who if objected to, is objected to on some insufficient ground, or the judge may try the action without assessors if he shall think fit.

25. (13.) *Remuneration of assessors.*] Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses as the judge may order.

26. (14.) *Deposit on application for assessors of amount of their remuneration.*] Every person requiring the judge to be assisted by assessors shall at the time of filing his application, deposit with the registrar the sum of two guineas for each assessor proposed, and such payments shall be

considered as costs in the action, unless otherwise ordered by the judge. Provided that where a person proposed as an assessor shall have in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required.

27. (15.) *Remuneration of assessors.*] Where an action shall be tried by the judge, with the assistance of any assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the judge shall direct.

28. (16.) *Where action not tried an allowance to be made to assessors.*] If after an assessor has been appointed the action shall not be tried, the judge shall have power to make an allowance to him in respect of any expense or trouble which he may have incurred by reason of his appointment, and direct the payment to be made out of the sum deposited for his remuneration.

29. (17.) *Assessors to sit with judge.*] The assessors shall sit in court with the judge, and assist him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff shall be entitled to recover.

*Consolidation of Actions or Stay of Proceedings.*

30. (18.) *Consolidation of actions.*] Where several actions shall be brought under this Act against a defendant in the same court in respect of the same negligence, act, or omission, the defendant shall be at liberty to apply to the judge that the said actions shall be consolidated.

31. (19.) *Opposite party to have notice.*] Applications for consolidation of actions shall be made upon notice to the plaintiffs affected by such consolidation.

32. (20.) *Stay of proceedings.*] In case several actions shall be brought under this Act against a defendant in the same court in respect of the same negligence, act, or omission, the defendant may, on filing an undertaking to be bound so far as his liability for such negligence, act, or omission is concerned by the decision in such one of the said actions as may be selected by the judge, apply to the judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action.

33. (21.) *Stay of proceedings; application for.*] Applications for stay of proceedings shall be made upon notice to the plaintiffs affected by stay of proceedings or *ex parte*.

34. (22.) *Judge may impose terms.*] Upon the hearing of any application for consolidation of actions or for stay of proceedings, the judge shall have power to impose such terms and conditions and make such order in the matter as may be just.

35. (23.) *Where order for stay of proceedings is made ex parte.*—If any order shall be made by a judge upon an *ex parte* application to stay proceedings, it shall be competent to the plaintiffs affected by such order to apply to the judge, upon notice or *ex parte*, to vary or discharge the order so made, and upon such last-mentioned application such order

shall be made as the judge shall think fit, and the judge shall have power to dispose of the costs occasioned by such order or orders as he may deem right.

36. (24.) *Where verdict given in selected action.*] In case a verdict in the selected action shall be given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their damages and costs.

37. (25.) *Defendant may admit his liability.*] A defendant may admit the truth in the plaintiffs' particulars in the actions of any statement of his liability for such negligence, act, or omission, and thereupon the provisions of Order XII., Rule 3, shall apply.

(26.) *Where more plaintiffs than one, compensation due to each to be found.*] Where two or more persons are joined as plaintiffs under Order V., Rule 1, and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the amount of compensation, if any, that each plaintiff is entitled to shall be separately found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the court may think fit.

Should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action, and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount which shall have been awarded to the respective plaintiffs to the total amount realised after the deduction of all the costs of the action as aforesaid.

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## APPLICATION FOR ASSESSORS.

[illegible]

(Here set out the names, addresses, and occupations of the persons above referred to.)

Plaintiff [*or* defendant].

I appoint  
*E. F.*  
*G. H.*

Judge.

*\* Where the other party does not consent, or where the other party has filed an application for the appointment of assessors, strike this paragraph out.*

J. B. DASENT.  
RUPERT KETTLE.  
A. MARTINEAU.  
H. J. STONOR.  
J. MOTTERAM.

SELBORNE, C.

27th December, 1880.

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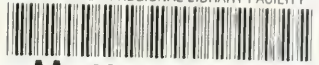




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